

## SUMMARIZED

**RECORD OF TRIAL**

(and accompanying papers)

of

Gary P. Pittman

(Name Last, First, Middle Initial)

(b)(6)

(Social Security Number)

Sergeant

(Rank)

HqBn, 1st MarDiv

(Unit Command Name)

USMC

(Branch of Service)

Camp Pendleton, CA

(Station or Ship)

By

GENERAL COURT-MARTIAL

Convened by

Commanding General

(Title of Convening Authority)

Marine Corps Base

(Unit/Command of Convening Authority)

Tried at

Camp Pendleton, California,  
(Place or Places of Trial)

on

29 Apr; 28 Jun; 8, 28Jul; 9, 17, 23, 27, 30, 31Aug, 1-3 Sept 2001ACTION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY(SPCM)/JAG(GCM)  
RCM 1111 and 1112, MCM, 1984)

UNIT COMMAND NAME		LOCATION OF JUDGE ADVOCATE OR GENERAL COURT MARTIAL CONVENING AUTHORITY JAG	DATE RECORD RECEIVED
ACTION		DATE	REMARKS
FINAL DISPOSITION: Findings and sentence, as approved by convening authority, correct in law and fact; to file			
OR Findings and sentence, as modified or corrected (see remarks), correct in law and fact; to file			
Acquittal or sentence set aside (see remarks), to file			
COPIES OF CMO DISPOSED OF IN ACCORDANCE WITH DEPARTMENT REGULATIONS			
JUDGE ADVOCATE OR LAW SPECIALIST			
SIGNATURE		RANK	DATE SIGNED

Vol III of VII

Front Cover

UNITED STATES MARINE CORPS  
GENERAL COURT-MARTIAL  
SIERRA JUDICIAL CIRCUIT

UNITED STATES	)	
	)	
v.	)	<b>MOTION FOR APPROPRIATE RELIEF</b>
	)	
GARY P. PITTMAN	)	<b>Request for continuance</b>
(b)(6)	)	
Sergeant	)	<b>22 June 2004</b>
U.S. Marine Corps	)	
	)	

1. **Nature of the Motion:** Pursuant to Article 40, UCMJ, and R.C.M. 906(b)(1), the defense moves the court to grant a continuance in the trial dates for a period of forty-five (45) days.

2. **Summary of Facts:** The following timeline illustrates the progression of the case of U.S. v. Sergeant G. P. Pittman:

- Charges were preferred against Sergeant Pittman on 16 October 2003. (See charge sheet).
- On 20 October 2003 the Commanding General for First Marine Division ordered Sergeant Colonel W.V. Gallo to conduct on Article 32 hearing into allegations against Sergeant Pittman. The order required the Article 32 hearing be completed within fifteen (15) days of 20 October 2003. (Enclosure, appointing letter).
- On 28 October 2003 the defense counsel filed three discovery requests with the government. (Enclosure, defense discovery requests).
- On 3 November 2003 the government provided a response to the discovery request.
- On 17 November 2003 the defense counsel filed one discovery request with the government.
- On 17 November 2003 defense counsel requested an independent investigator be

appointed to assist counsel in the investigation of charges against Sergeant Pittman. This request was denied by the First Marine Division SJA in an undated later. (Enclosure, Reponse letter).

- On 18 November 2003 defense counsel requested an expert consultant in the field of forensic pathology to assist in preparation for the Article 32 investigation against Sergeant Pittman. This request was denied by the First Marine Division SJA in an undated later. (Enclosure, Defense request for Expert Assistance).

- On 1 March 2004 Colonel Gallo's Investigating Officer's report, recommending that Sergeant Pittman's case be referred to a special court martial, was completed. (Enclosure, cover page of Article 32 report).

- An additional charge was preferred against Sergeant Pittman on 5 April 2004. (See charge sheet).

- On 29 April 2004 Sergeant Pittman was arraigned. On that date trial milestones were established that set a trial date of 9 – 27 August 2004. (Enclosure, Trial and Arraignment Schedule).

- On 12 May 2004 defense counsel filed its fifth request for discovery with the government. This request for discovery was answered 21 June 2004, however, the requested discovery has not been provided. (Enclosure, Defense Discovery Request of 12 May 2004).

- On 12 May 2004 defense counsel filed a request for a bill of particulars with the government. This request for a bill of particulars has not been answered. (Enclosure, Defense request for bill of particulars).

- John Tranberg was retained as civilian counsel by Sergeant Pittman on approximately 28 May 2004.

- On 3, 5 – 7 June, depositions were taken of numerous witnesses at the government's

request.

- Transcripts of the deposition testimony have not been provided to defense counsel to date.
- The government has indicated in its 7 April 2004 notice of witnesses that the government intends to call an operational law expert to testify in its case in chief. That expert has not been identified. (Enclosure, government notice of witnesses).

3. **Discussion**: There is reasonable cause to grant the requested continuance of trial milestones and trial dates for a period of forty-five (45) days from the currently scheduled trial milestones. The defense team requests this time period in order to allow the defense team to be sufficiently prepared for trial in this case. The military judge may, for reasonable cause, "grant a continuance to any party for such time, and as often, as may appear to be just." Article 40, UCMJ, A2-12, MANUAL FOR COURT MARTIAL, 2002 ed. The Rules for Court Martial include "insufficient opportunity to prepare for trial," as a basis for granting a continuance request. See R.C.M. 906(b)(1) discussion. A trial judge should liberally grant continuance requests where good cause for the delay exists. U.S. v. Dunks, 1 M.J. 254, 255, n3 (C.M.A. 1976) citing U.S. v. Daniels, 11 U.S.C.M.A. 52, 55 (1959); U.S. Nichols, 2 U.S.C.M.A. 27, 36 (1952).

The request for a continuance is based on six main factors. First, there are still numerous items of requested discovery that have not been turned over to the defense. The lack of discovery is also the basis of a separate defense motion. Second, Sergeant Pittman retained a civilian defense lawyer in late May. The complex nature of the facts in this case, combined with the large volume of evidence, requires that civilian counsel receive an adequate amount of time to become familiar with the facts of the case before proceeding to trial. Third, the government requested deposition testimony be taken from numerous witness during the first week of June. That process was concluded on 8 June, transcripts of this testimony are not yet available. Fourth, the lack of expert



assistance to date for the defense has precluded the defense from adequately preparing a defense in this case. The defense initially requested expert assistance, in the form of a forensic pathologist, in November 2003. The government denied the defense request for expert assistance. The government has had the assistance of a forensic pathologist since conducting an autopsy on the body of the alleged victim, (b)(6) since the summer of 2003. The defense request for the production of multiple expert witnesses is the basis of additional motions. Fifth, the lack of a bill of particulars from the government has precluded the defense from being able to properly prepare a defense against the charges pending against Sergeant Pittman. The defense requested a bill of particulars in its discovery request of November 2003 and in a request for a bill of particulars on 12 May 2004 from the government. To date the government has on one occasion "refused" the defense bill of particulars (in November) and has not filed a response to the most recent defense bill of particulars. Sixth, the government has indicated its desire to utilize an expert in the field of operational law; this expert, however, has not been identified. Until this takes place the defense is not able to determine whether a defense expert in the same field will also be necessary and relevant.

These six factors have combined to make it exceptionally difficult for the defense to adequately prepare a defense to the charges against Sergeant Pittman under the trial milestones in existence at this time. As a result, the defense requests forty-five (45) additional days to prepare its case.

4. **Relief Requested:** Pursuant to R.C.M. 906(b)(1), the defense respectfully requests the court to grant a continuance for a period of forty-five (45) days.
5. **Evidence:** The defense will present documentary evidence in support of this motion.
6. **Oral Argument:** The defense requests oral argument.

  
J. TRANBERG

  
W. A. FOLK

/S/

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Certificate of Service

I certify that a true copy of this motion was served on opposing counsel on this 22nd day of June, 2004.

  
W. A. FOLK

APPELLATE EXHIBIT V1

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UNITED STATES MARINE CORPS  
1ST MARINE DIVISION (REIN)  
BOX 555380  
CAMP PENDLETON, CA 92055-5380

IN REPLY REFER TO:  
5813  
LSST-E  
20 Oct 03

From: Commanding General  
To: Colonel W.V. Gallo, U.S. Marine Corps Reserve

Subj: ~~FORMAL PRETRIAL INVESTIGATION IN THE CASES OF~~ UNITED STATES V. MAJOR  
(b)(6) USMCR; SERGEANT G.P. PITTMAN, (b)(6)  
USMCR; LANCE CORPORAL (b)(6) USMCR.

Ref: (a) Article 32, UCMJ  
(b) R.C.M. 405, Manual for Courts-Martial, United States (MCM) (2000 Ed.)  
(c) R.C.M. 707(c)(1), MCM (2000 Ed.)

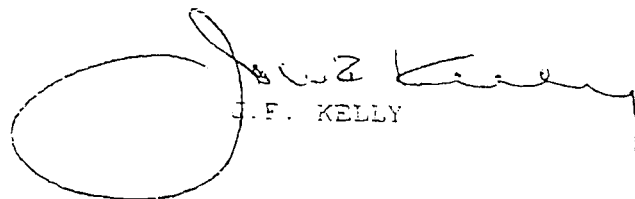
Encl: (1) DD Form 458 (Charge Sheet) of Maj (b)(6)  
(2) DD Form 458 (Charge Sheet) of Sgt  
(3) DD Form 458 (Charge Sheet) of LCpl

1. Pursuant to the references (a) and (b), you are hereby appointed to conduct a formal pretrial investigation into the charges and specifications contained in the enclosures. As Investigating Officer you will conduct your investigation in accordance with these references. You are directed to ensure that this investigation is scheduled to be conducted within 15 days of the date of this appointment letter.

2. Pursuant to reference (c), you are authorized to grant continuance requests. Following conclusion of the hearing on this matter, if circumstances prevent completion of your report within 15 days, you are to notify me directly.

3. Upon completion of this investigation, make a formal report, including therein your recommendations for the disposition of the subject cases. In your report, include a copy of any requests for delay.

4. Captain J.M. McCall, USMC, has been detailed to serve as trial counsel for the Government.

  
J.F. KELLY

UNITED STATES MARINE CORPS  
IN THE SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

SERGEANT

U. S. Marine Corps

DEFENSE DISCOVERY  
REQUEST

SERGEANT GARY P. PITTMAN, U.S. Marine Corps, by and through detailed defense counsel, First Lieutenant W. A. Folk, hereby requests that the trial counsel provide the following information at the earliest possible date.

I. STATEMENTS/WITNESSES

1. All handwritten, typed, or otherwise recorded statements about any offenses, charged or uncharged, pertaining to the accused, that are in the possession of the government. This includes all statements of any person, not just the accused or potential government witness, taken by or given to any person or agency, including all civilian or military law enforcement agencies, inspector general investigations, and all formal or informal commander's inquiries, or investigations. R.C.M. 701(a)(1)(C).

2. The names, units, addresses, and telephone numbers (commercial and DSN, if applicable) of all witnesses the government intends to call in its case-in-chief, or motions hearing, if any. R.C.M. 701(a)(3)(A).

3. The names, units, addresses, and telephone numbers (commercial and DSN, if applicable) of all witnesses the government intends to call to rebut a defense of alibi, innocent ingestion, or lack of mental responsibility. R.C.M. 701(a)(3)(B).

4. The name, units, addresses, and telephone numbers (commercial and DSN, if applicable) of all witnesses the government intends to call during presentencing. R.C.M. 701(a)(5)(B).

5. The name of any member of the accused's command or any investigator who has spoken to the accused about the charged offenses, or any uncharged offenses, and a summary of the nature of such conversation. Specifically, the names of any NCIS agents who have spoken to the accused since he was confined.

6. A description of all hearsay statements, oral or written, intended to be offered at trial under M.R.E. 803, and the name, address, and telephone number of the declarants. R.C.M. 703(f)(1).

7. A description of all hearsay statements, oral or written, intended to be offered at trial under M.R.E. 807, and the name, address, and telephone number of the declarants.

8. Disclosure of all evidence affecting the credibility all of government witnesses to include, but not limited to:

a. Prior civilian and court-martial convictions, and all arrests or apprehensions of any government witness. The defense specifically requests a check with the National Crime Information Center (NCIC), National Records Center (NRC), and all local military criminal investigatory organizations be made. United States v. Eshalomi, 23 M.J. 12 (C.M.A. 1986).

b. Records of nonjudicial punishment of any government witness. United States v. Green, 37 M.J. 88 (C.M.A. 1993).

c. All investigations of any type or description, pending initiation, ongoing, or recently completed which pertain to alleged misconduct of any type or description, committed by a government witness. United States v. Stone, 40 M.J. 420 (C.M.A. 1994).

d. All evidence in control of or known to the government concerning the mental status of the accused or any government witness. Material sought specifically includes medical records reflecting psychiatric diagnosis or treatment, medical records reflecting head injuries of any type, and any drug and/or alcohol addiction diagnosis or rehabilitation records. United States v. Brakefield, 43 C.M.R. 828 (A.C.M.R. 1971); United States v. Brickey, 8 M.J. 757 (A.C.M.R. 1980) *aff'd* 16 M.J. 258 (C.M.A. 1983); United States v. Eschalomi, 23 M.J. 12 (C.M.A. 1986).

e. All evidence, in the control of or known to the government, of character or conduct or bias bearing on the credibility of government witnesses. Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). This is specifically meant to include information relating to any past, present, or potential future plea agreements, immunity grants, payments of any kind and in any form, assistance to or favorable treatment with respect to any pending civil, criminal, or administrative dispute between the government and the witness, and any other matters which could arguably create an interest or bias in the witness in favor of the government or against the defense or act as an inducement to testify to color or shape testimony.

f. For any government witness who has prior military service, or was discharged from the military, the date of separation from the services, the discharge provisions used to effect such discharge, and a summary of circumstances explaining any discharge for other than completion of obligated term of service.

g. A complete and legible copy of the official civilian personnel file of each government witness who is a civilian employee of the United States.

h. The results of any polygraph examinations, including the Polygraph Examination Report (DA Form 2802-E) and related polygraph records, the Polygraph Consent

Form, the Polygraph Examination Authorization Request, the Polygraph Examination Authorization, the Polygraph Examination Quality Control Review and any rights certificate (DA Form 3881) executed by the examiner and the subject. United States v. Mougene, 6 M.J. 589 (A.F.C.M.R. 1978), United States v. Simmons, 38 M.J. 376 (C.M.A. 1993).

9. Notice whether the government intends to impeach a witness with a conviction older than 10 years. M.R.E. 609(b).

## II. EVIDENCE REGARDING ACCUSED

1. The contents of all statements, oral or written, made by the accused that are relevant to the case, known to the government or within control of the government, regardless whether the government intends to use the statements at trial. M.R.E. 304(d)(1); United States v. Dancy, 38 M.J. 1 (C.M.A. 1993).

2. A complete and legible copy of the accused's Service Record Book (both sides).

3. A complete and legible copy of the accused's health records.

4. All affidavits supporting requests, which pertain to this case, whether or not granted, for authorization to search and seize or apprehend.

5. Disclosure of all evidence seized from the person or property of the accused, or believed to be owned or possessed by the accused, and its present location. M.R.E. 311 (d)(1).

6. All evidence of a prior identification of the accused at a traditional line up, photo line up, show up, voice identification, or other identification process which the prosecution intends to offer against the accused at trial. M.R.E. 321(c)(1).

7. Notice of government intent to offer identification evidence. M.R.E. 321(c)(2)(B).

8. Any records of prior civilian or military convictions of the accused which may be offered by the government during the trial for any purpose, including impeachment. R.C.M. 701(a)(4).

9. Notice of the nature of evidence of other crimes, wrongs, or other misconduct by the accused, as well as the government's theory of admissibility in this case. M.R.E. 404(b).

## III. EVIDENCE MATERIAL TO THE PREPARATION OF THE DEFENSE

1. All exculpatory, extenuating, or mitigating evidence known, or, with reasonable diligence should be known, to the government which reasonably tends to negate the guilt of the accused for any offense charged, reduce the guilt of the accused for any offense charged, or reduce the punishment. R.C.M. 701(a)(6); Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10

L.Ed.2d 215 (1963); United States v. Aqurs, 427 U.S. 97, 93 S.Ct. 2392, 49 L.Ed.2d 342 (1976); United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985); United States v. Simmons, 38 M.J. 376 (C.M.A. 1993); United States v. Kinzer, 39 M.J. 559 (A.C.M.R. 1994); United States v. Sebring, 44 M.J. 805 (N.M. Ct. Crim.App. 1996).

2. All evidence in rebuttal which is inculpatory in nature or material to punishment. United States v. Trimper, 28 M.J. 460 (C.M.A. 1989); United States v. Dancy, 38 M.J. 1 (C.M.A. 1993).

#### IV. PANEL SELECTION

1. A complete and legible copy of the completed questionnaire response for each member. R.C.M. 912(a)(1).

2. All written matters provided to the convening authority concerning the selection of the members detailed to the court-martial. R.C.M. 912(a)(2).

3. The convening order and all amending orders. All requests for excusal of court members and any written documents memorializing the denial or approval of the request. R.C.M. 701(a)(1)(B).

#### V. JUDICIAL NOTICE

1. All matters which the government intends to have judicially noticed pursuant to M.R.E. 201. This request is made to maintain judicial economy in that any issues may be resolved before trial.

#### VI. EXPERTS AND PHYSICAL EVIDENCE

1. Pursuant to United States v. Garries, 22 M.J. 288 (C.M.A. 1986) cert denied, 479 U.S. 985, 107 S.Ct. 575, 93 L.Ed.2d 578 (1986), United States v. Mobley, 31 M.J. 273 (C.M.A. 1990), the defense requests:

a. Notification of testing on any evidence which may consume the only available samples of the evidence and an opportunity to be present at any such testing.

b. An opportunity to examine all evidence, whether or not it is apparently exculpatory, prior to its release from the control of any government agency or agents.

2. All chain of custody documents or litigation packets generated by any law enforcement or military agency in conjunction with the taking of evidence or testing of evidence during the investigation of the alleged offenses.

3. Notice of and the curricula vitae for all expert witnesses the government intends to call in its case-in-chief and during presentencing. The defense requests the government disclose the number of times each expert has been qualified as an expert witness in a military and

civilian court, the types of court each witness has testified in (civilian or military), the locations (city and state) of each of those courts, and the civil and criminal docket number of each of those cases. The defense further requests disclosure of any information or evidence considered by the expert prior to testifying.

4. All reports or results of scientific tests or experiments conducted by the government or agents acting on its behalf which are material to the preparation of the defense or are intended for use by the government as evidence in the government's case-in-chief.

5. Copies of all messages concerning all urine samples submitted by the accused relating to the charged offenses.

6. A complete and legible copy of all chain of custody documents pertaining to the taking of the urine sample, or testing of the urine sample, including but not limited to:

- a. OPNAV 5350/2;
- b. All intra-laboratory chain of custody documents;
- c. All documents prepared locally in testing the urine sample by the screening laboratory.

7. A complete and legible copy of the radioimmunoassay printout of the urine sample in question, and a copy of the calibration method and tests for the batch of urine specimens concerned.

8. A complete and legible copy of the gas chromatograph/tracings printout of the urine sample in question, and a copy of the calibration method and tests for the batch of urine specimens concerned.

## VII. INSTRUCTIONS

The defense requests the government provide it with all proposed instructions the government intends to request that the court use in its instructions to the members, as well as the authority for each instruction.

## VIII. CONCLUSION

The defense requests equal and adequate opportunity to interview witnesses and inspect evidence. Specifically, the defense requests the trial counsel to instruct all of the witnesses and potential witnesses under military control, including those on any retired lists to cooperate with the defense when contacted by the defense for purposes of interviewing these persons or otherwise obtaining information from them. Art. 46; R.C.M. 701(e).

If, before, or during the court-martial, the government discovers additional evidence or material previously requested or required to be produced, which is subject to discovery or



inspection under R.C.M. 701, the government shall promptly notify the defense of the existence of the additional evidence or material. R.C.M. 701(d).

This discovery request is continuing and shall apply to any additional charges or specifications that may be preferred after this request for discovery is served on the government. Immediate written notification is requested on all items the government is unable or unwilling to produce.

The defense acknowledges that certain of these requests may have been partially complied with prior to this discovery request. Those matters previously provided need not be duplicated.

The defense reserves the right to make additional continuing discovery requests.

The defense requests a written response to this request.

/S/

W. A. Folk  
First Lieutenant  
U. S. Marine Corps  
Detailed Defense Counsel

UNITED STATES MARINE CORPS  
IN THE SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)  
SERGEANT

U. S. Marine Corps

DEFENSE DISCOVERY  
REQUEST II

SERGEANT GARY P. PITTMAN, U.S. Marine Corps, by and through detailed defense counsel, First Lieutenant W. A. Folk, hereby requests that the trial counsel provide the following information at the earliest possible date.

1. The names of all Iraqi prisoners that Sgt Pittman had contact with while working at Camp White Horse detention facility in Iraq.
2. The complete criminal record/background of (b)(6)
3. All records pertaining to (b)(6) service in the Iraqi Army.
4. The names of all Iraqi prisoners that Sergeant Pittman is accused of striking, as alleged in specification 1 of Charge II.
5. The duty roster for Camp White Horse, covering dates from 1 May 2003 through 15 June 2003.
6. The complete criminal record/background of (b)(6)
7. The complete criminal record/background of (b)(6)
8. A list of Sergeant Pittman's duties while stationed at Camp White Horse in Iraq.
9. A list of the names of all Marines or individuals who provided instruction to Sergeant Pittman and/or 2/25 regarding the safe handling and treatment of enemy prisoners of war.
10. A list of all publications that were used by the Marines and individuals listed in #9 *supra* while instructing Marines on these matters.
11. A list of the charges against (b)(6) which led to their detainee status at Camp White Horse.

APPELLATE EXHIBIT VI

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12. A list of every NCIS agent who participated in the Camp White Horse Investigation, and a copy of their employment record, specifically to include any and all disciplinary action initiated against them while in NCIS.

13. A list of all training provided to 2/25 and dates of when training was provided as it related to handling of EPWs.

14. Names and contact information for all Iraqi prisoners handled at Camp White Horse.

15. Written policies concerning Camp White Horse's SOP for medical emergencies.

The defense acknowledges that certain of these requests may have been partially complied with prior to this discovery request. Those matters previously provided need not be duplicated.

The defense reserves the right to make additional continuing discovery requests.

The defense requests a written response to this request.

/S/

W. A. Folk  
First Lieutenant  
U. S. Marine Corps  
Detailed Defense Counsel

**CERTIFICATE OF SERVICE**

This certifies that I served a copy of the foregoing on Trial Counsel by electronic mail on this 28 October 2003.

/S/

W. A. FOLK

UNITED STATES MARINE CORPS  
IN THE SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

SERGEANT

U. S. Marine Corps

DEFENSE DISCOVERY  
REQUEST III

SERGEANT GARY P. PITTMAN, U.S. Marine Corps, by and through detailed defense counsel, First Lieutenant W. A. Folk, hereby requests that the trial counsel provide the following information at the earliest possible date.

1. The names of all Marines involved with the Human Intelligence Exploitation Team (HEIT) at Camp White Horse.
2. A list of all procedures that applied to members of the HEIT at Camp White Horse.
3. A list of all procedures that apply to members of the HEIT team as they pertain to applying violence to EPWs.
4. Contact information for all Marines involved in HEIT procedures at Camp White Horse.
5. All information from the HEIT Marines regarding when (b)(6) was interrogated, the length of the interrogation, the form that his interrogation took, and what information was provided to the HEIT Marines by (b)(6).
6. A list of all detainees interrogated by the HEIT Marines, and all pertinent information as it related to these Iraqis.

The defense acknowledges that certain of these requests may have been partially complied with prior to this discovery request. Those matters previously provided need not be duplicated.

The defense reserves the right to make additional continuing discovery requests.

The defense requests a written response to this request.

/S/

W. A. Folk  
First Lieutenant  
U. S. Marine Corps

APPELLATE EXHIBIT

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Detailed Defense Counsel

**CERTIFICATE OF SERVICE**

This certifies that I served a copy of the foregoing on Trial Counsel by electronic mail on this 28 October 2003.

/S/

W. A. FOLK



UNITED STATES MARINE CORPS  
LEGAL SERVICE SUPPORT SECTION  
1st FORCE SERVICE SUPPORT GROUP  
MARINE FORCES PACIFIC  
CAMP PENDLETON CALIFORNIA 92055-5607

In Reply Refer  
To:  
5800  
6LSF  
3 Nov 2003

From: Trial Counsel  
To: Defense Counsel

Subj: GOVERNMENT RESPONSE TO DEFENSE REQUEST FOR DISCOVERY ICO  
UNITED STATES v. SERGEANT G.P. PITTMAN, U.S. MARINE CORPS  
RESERVE

Ref: (a) R.C.M. 701, Manual for Courts-Martial (2000 edition)  
(b) 18 U.S.C. Sec. 3500 (1998)  
(c) Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10  
L.Ed.2d 215 (1963)  
(d) U.S. v. Webster, 1 M.J. 216 (C.M.A. 1975)  
(e) R.C.M. 912(a), Manual for Courts-Martial (2000 edition)  
(f) M.R.E. 404(b), Manual for Courts-Martial (2000 edition)

1. Pursuant to defense request 1. - (I) 5-7, 9; (II) 1, 4-9;  
(III); (IV); (V); (VI) 1-4; (VII); (VIII); defense request 2. -  
1-3, 4-7, 9-15; defense request 3. - 1-6; the discovery request  
is answered as follows:

a. All material within the possession, control, or custody of  
the trial counsel has been given to defense counsel/is available  
for defense inspection. The trial counsel will further give/make  
available for inspection any additional evidence previously  
requested or required to be produced that is discovered before or  
during the court-martial.

2. Names and phone numbers of witnesses shall be forthcoming as  
soon as the government decides which witnesses it will call.

3. Denied as to relevance/equal access - defense request 1. -  
(I) 8; (VI) 5-8; defense request 2. - 8.

4. All names of the investigators listed in m have been  
provided. All notes requested in m are denied as to relevance.

5. Bill of Particulars - Your request for a bill of particulars  
contained in discovery request 2 - (4) is denied at this time.  
See RCM 701, 906 (b)(6) and the discussion thereafter.

APPELLATE EXHIBIT VI

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6. Disclosure by the Defense. Pursuant to reference (a) the government requests notice of any affirmative defense, to include:

- a. Notice of alibi;
- b. Intent to rely upon the defense of lack of mental responsibility, to include voluntary intoxication;
- c. Intention to introduce expert testimony relating to mental disease, defect, or other condition, to include mental status resulting from voluntary intoxication, which may bear upon the guilt of the accused; and
- d. Reports of examination and tests as set forth in the reference (a).

7. Pursuant to reference (a) the government requests:

a. Names of witnesses and statements. The names and addresses of all witnesses, other than the accused, whom the defense intends to call during the defense case in chief, and provide all sworn or signed statements known by the defense to have been made by such witnesses in connection with the case. The names and addresses of any witnesses whom the defense intends to call at the pre-sentencing proceedings under R.C.M. 1001(c), and permit the trial counsel to inspect any written material that will be presented by the defense at the pre-sentencing proceeding.

b. Documents and tangible objects. Permit the trial counsel to inspect books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defense and which the defense intends to introduce as evidence in the defense case-in-chief/sentencing at trial.

/S/ J.M. McCALL  
J.M. McCALL  
Captain, U.S. Marine Corps  
Trial Counsel

\*\*\*\*\*  
I certify that I caused this response to be served on the  
opposing counsel on 3 Nov 2003.

/S/ J.M. McCALL  
J.M. McCALL



**UNITED STATES MARINE CORPS**  
Legal Services Support Team Echo (Defense)  
1st Force Service Support Section  
Box 555607  
Camp Pendleton, California 92055-5607

5810  
LSST-D/waf  
17 Nov 03

From: Detailed Defense Counsel  
To: Commanding Officer, First Marine Division (REIN)MARFORPAC  
Via: Trial Counsel

Subj: REQUEST FOR AN INDEPENDENT INVESTIGATOR TO ASSIST THE DEFENSE IN THE  
CASE OF US V. SERGEANT G. P. PITTMAN, USMCR

Ref: (a) R.C.M. 506, 701, 703, MCM 2002  
(b) Article 46, UCMJ,  
(c) U.S. v. Washington, 46 M.J. 477 (C.A.A.F. 1997)

1. Per the references, the defense requests that an independent investigator, not employed by the Naval Criminal Investigative Service (NCIS), be appointed to assist Sergeant Pittman and his defense counsel to prepare for trial. Sergeant Pittman currently faces numerous charges and specifications, with a maximum sentence of four years confinement and is vigorously contesting the charges and specifications that relate to his alleged dereliction of duty and assaults.

2. In order to ensure that Sergeant Pittman receives a fair trial, the appointment of an independent investigator is necessary.

3. The charges against Sergeant Pittman stem from his service as a member of Second Battalion, Twenty-Fifth Marines, while deployed in Iraq. Sergeant Pittman worked at Camp White Horse, a detention facility for Iraqi Prisoner's of War, detainees, and common criminals. Sergeant Pittman is charged with assaulting "unknown Iraqi prisoners" (Specification 1, Charge II). The Defense is confident that these "unknown" Iraqi prisoners do not exist. Additionally, the defense believes that locating and interviewing heretofore "unknown" Iraqi prisoners is crucial to present an effective defense to the charges in this case.

4. In order to locate and identify Iraqis the defense requires an investigator who can speak Arabic, and who has the time and training to locate and interview relevant Iraqis who can testify about their treatment while detained at Camp White Horse. The defense counsel does not possess the language skills or resources to perform these tasks.

5. This case involves many potential witnesses who have not been interviewed. This is clearly illustrated by the limited number of logbook pages turned over to the defense as part of the NCIS investigation. These potential witnesses must be located, interviewed, and possibly prepared for trial. The government expended extensive amounts of time and money in its investigation of the charges against Sergeant Pittman. Without an independent investigator the defense will not be able to prepare for the Article 32 hearing in this case, and if necessary, prepare for trial.

6. The Defense requests a written response to this request as soon as possible.

APPELLATE EXHIBIT VI

PAGE 22 OF 44

/S/

W. A. Folk  
First Lieutenant  
Detailed Defense Counsel

\*\*\*\*\*

I served this expert witness request on Trial Counsel on 17 November 2003.

/S/

W. A. FOLK

APPELLATE EXHIBIT V1

PAGE 23 OF 44



**UNITED STATES MARINE CORPS**  
LEGAL SERVICES SUPPORT SECTION TEAM E  
1st FORCE SERVICE SUPPORT GROUP, MARFORPAC  
BOX 555607  
CAMP PENDLETON, CALIFORNIA 92055-5607

IN REPLY REFER TO:  
5890  
TC/mac  
20 Nov 03

FIRST ENDORSEMENT on First Lieutenant Folk's letter 5810 LSST-D/waf of 17 Nov 03

From: Captain J. M. McCall, Trial Counsel


To: Commanding General, First Marine Division

Via: Staff Judge Advocate

Subj: REQUEST FOR AN INDEPENDENT INVESTIGATOR TO ASSIST THE DEFENSE  
IN THE CASE OF US V. SERGEANT G. P. PITTMAN, USMCR

Ref: (a) R.C.M. 506, MCM (2002 ed.)  
(b) R.C.M. 701, MCM (2002 ed.)  
(c) R.C.M. 703, MCM (2002 ed.)  
(d) U.S. v. Washington, 46 M.J. 477, 481 (C.A.A.F. 1997)

1. Forwarded, recommending disapproval.
2. Per reference (b), the Government has arranged for defense access to the prosecution's witnesses and documentary evidence. Per reference (d), the defense has not demonstrated this access to be inadequate thus necessitating investigative assistance.
3. Should you have any questions, please contact me at (760) 725-4613 or e-mail [mcalljm@1fssg.usmc.mil](mailto:mcalljm@1fssg.usmc.mil).

  
J.M. MCCALL  
Captain, U.S. Marine Corps  
Trial Counsel

APPELLATE EXHIBIT 17

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UNITED STATES MARINE CORPS  
1<sup>ST</sup> MARINE DIVISION (REIN)  
BOX 555380  
CAMP PENDLETON, CA 92055-5380

IN REPLY REFER TO:  
5800  
17

SECOND ENDORSEMENT on DC ltr 5810 REQUEST FOR INVESTIGATOR of 17 Nov 03

From: Commanding General, 1st Marine Division (Rein)  
To: Detailed Defense Counsel  
Via: Trial Counsel

Subj: REQUEST FOR AN INDEPENDENT INVESTIGATOR TO ASSIST THE DEFENSE IN THE  
CASE OF U.S. v. SERGEANT G.P. PITTMAN, USMCR

1. Returned, denied.

2. Your request was carefully considered. I have determined that the tasks to be performed by such an expert can be accomplished by the defense team and Naval Criminal Investigative Services. You have not shown that employment of an independent investigator is relevant or necessary to assist in your defense.

*Philip J. Betz Jr.*  
P. J. BETZ, JR.  
By direction

Copy to:  
DC  
File

UNITED STATES MARINE CORPS  
IN THE SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN  
(b)(6)  
SERGEANT  
U. S. Marine Corps

DEFENSE DISCOVERY  
REQUEST IV

SERGEANT GARY P. PITTMAN, U.S. Marine Corps, by and through detailed defense counsel, First Lieutenant W. A. Folk, hereby requests that the trial counsel provide the following information at the earliest possible date.

1. Copies of all handwritten notes made by all NCIS agents involved in the investigation regarding the death of (b)(6) the treatment of Iraqi detainees at Camp White Horse, or the investigation of any matters pertaining to the charges regarding "unknown Iraqi prisoners" alleged in Specification 1 of Charge II.

The defense acknowledges that certain of these requests may have been partially complied with prior to this discovery request. Those matters previously provided need not be duplicated.

The defense reserves the right to make additional continuing discovery requests.

The defense requests a written response to this request.

/S/

W. A. Folk  
First Lieutenant  
U. S. Marine Corps  
Detailed Defense Counsel

APPELLATE EXHIBIT VI

PAGE 26 OF 44

**CERTIFICATE OF SERVICE**

This certifies that I served a copy of the foregoing on Trial Counsel by electronic mail on this 17 November 2003.

/S/

W. A. FOLK



**UNITED STATES MARINE CORPS  
IN THE SIERRA JUDICIAL CIRCUIT**

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

SERGEANT

U. S. Marine Corps

DEFENSE FIFTH DISCOVERY  
REQUEST

SERGEANT GARY P. PITTMAN, U.S. Marine Corps, by and through detailed defense counsel, First Lieutenant W. A. Folk, hereby requests that the trial counsel provide the following information at the earliest possible date.

1. A complete copy of Lance Corporal (b)(6) SRB/OMPF to include all documents related to his non-judicial punishment administered as a result of his pretrial agreement to testify against Sergeant Pittman.

2. The defense specifically requests a legible copy of the right side of the following government witnesses' SRB/OMPFs:

- a. Lieutenant Colonel (b)(6)
- b. Commander (b)(6)
- c. Lieutenant Commander (b)(6)
- d. Major (b)(6)
- e. Staff Sergeant (b)(6)
- f. Staff Sergeant (b)(6)
- g. Staff sergeant (b)(6)
- h. Sergeant I (b)(6)
- i. Sergeant (b)(6)
- j. Sergeant (b)(6)
- k. Sergeant I (b)(6)
- l. Sergeant (b)(6)
- m. Corporal
- n. HM3 (b)(6)
- o. HM3
- p. Corporal (b)(6)
- q. Lance Corporal (b)(6)
- r. Lance Corporal
- s. Lance Corporal
- t. Lance Corporal
- u. Lance Corporal
- v. Lance Corporal
- w. Lance Corporal

APPELLATE EXHIBIT VI

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- x. Lance Corporal (b)(6)
- y. Lance Corporal
- z. Lance Corporal
- aa. Lance Corporal
- bb. Lance Corporal
- cc. Lance Corporal
- dd. Lance Corporal
- ee. Private First Class (b)(6)
- ff. Major (b)(6)

3. The defense specifically requests a check with the National Crime Information Center (NCIC), National Records Center (NRC), and all local military criminal investigatory organizations be made for all government witnesses. Specially, the defense requests this check be conducted for the following witnesses:

- a. Lieutenant Colonel (b)(6)
- b. Commander (b)(6)
- c. Lieutenant Commander (b)(6)
- d. Major (b)(6)
- e. Staff Sergeant (b)(6)
- f. Staff Sergeant
- g. Staff sergeant
- h. Sergeant (b)(6)
- i. Sergeant
- j. Sergeant
- k. Sergeant
- l. Sergeant
- m. Corporal
- n. HM3 (b)(6)
- o. HM3
- p. Corporal (b)(6)
- q. Lance Corporal (b)(6)
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- z. Lance Corporal
- aa. Lance Corporal
- bb. Lance Corporal
- cc. Lance Corporal
- dd. Lance Corporal
- ee. Private First Class (b)(6)

ff. Major (b)(6)

Defense also requests the name of the law enforcement agent conducting this background check.

3. A complete and legible copy of the Lance Corporal (b)(6) military health records.
4. The complete criminal record/background of (b)(6)
5. All records pertaining to (b)(6) service in the Iraqi Army.
6. All records pertaining to (b)(6) service to the Baath party in Iraq.
7. The complete criminal record/background of the (b)(6) brothers.
8. Contact information for all percipient witnesses involved in the fact pattern that the government considers 404(b) evidence. Specifically this includes but is not limited to Mr. (b)(6) and all BOP employees and all prisoners who made statements connected with this incident.

This discovery request is continuing and shall apply to any additional charges or specifications that may be preferred after this request for discovery is served on the government. Immediate written notification is requested on all items the government is unable or unwilling to produce.

The defense acknowledges that certain of these requests may have been partially complied with prior to this discovery request. Those matters previously provided need not be duplicated.

The defense reserves the right to make additional continuing discovery requests.

The defense requests a written response to this request.

/S/

W. A. Folk  
First Lieutenant  
U. S. Marine Corps  
Detailed Defense Counsel

**CERTIFICATE OF SERVICE**

This certifies that I served a copy of the foregoing on Trial Counsel by electronic mail on this 4<sup>TH</sup> of May 2004. 12<sup>th</sup>

/S/

W. A. FOLK

**INVESTIGATING OFFICER'S REPORT**  
(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)

FROM: (Name of Investigating Officer - Last, First, MI)  <b>GALLO, William V.</b>		b. GRADE  <b>Colonel (O-6)</b>	c. ORGANIZATION  <b>I Marine Augmentation Command Element (MACE) I Marine Expeditionary Force (MEF) Camp Pendleton, CA 92055</b>	d. DATE OF REPORT  <b>1 March 2004</b>
2a. TO: (Name of Officer who directed the investigation - Last, First, MI)  <b>MATTIS, James N.</b>		b. TITLE  <b>Commanding General</b>		c. ORGANIZATION  <b>First Marine Division Camp Pendleton, CA 92055</b>
3a. NAME OF ACCUSED (Last, First, MI)  <b>PITTMAN, Gary P.</b>		b. GRADE  <b>Sergeant (E-5)</b>	c. SSN  <b>(b)(6)</b>	d. ORGANIZATION <b>Headquarters Battalion 1st Marine Division Camp Pendleton, CA 92055</b> e. DATE OF CHARGES <b>16 October 2003</b>
(Check appropriate answer)				
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)				YES NO <input checked="" type="checkbox"/> <input type="checkbox"/>
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)				<input checked="" type="checkbox"/>
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d) (2), 502(d)				<input checked="" type="checkbox"/>
7a. NAME OF DEFENSE COUNSEL (Last, First, MI)  <b>FOLK, William A.</b>		b. GRADE <b>1st Lt (O-2)</b>	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any)  <b>N/A</b>	
c. ORGANIZATION (If appropriate) <b>Legal Service Support Section 1st Force Service Support Group Camp Pendleton, CA 92055</b>		c. ORGANIZATION (If appropriate)		
d. ADDRESS (If appropriate)		d. ADDRESS (If appropriate)		
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)				
a. PLACE		b. DATE		
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.				
c. SIGNATURE OF ACCUSED				
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)				YES NO
a. THE CHARGE(S) UNDER INVESTIGATION				<input checked="" type="checkbox"/>
b. THE IDENTITY OF THE ACCUSER				<input checked="" type="checkbox"/>
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31				<input checked="" type="checkbox"/>
d. THE PURPOSE OF THE INVESTIGATION				<input checked="" type="checkbox"/>
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE				<input checked="" type="checkbox"/>
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT				<input checked="" type="checkbox"/>
g. THE RIGHT TO CROSS-EXAMINE WITNESSES				<input checked="" type="checkbox"/>
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED				<input checked="" type="checkbox"/>
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION				<input checked="" type="checkbox"/>
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING				<input checked="" type="checkbox"/>
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)				<input checked="" type="checkbox"/>
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL				

NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the numerical and, if appropriate, lettered heading (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

UNITED STATES MARINE CORPS  
IN THE SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN  
(b)(6)  
SERGEANT  
U. S. Marine Corps

DEFENSE FIFTH DISCOVERY  
REQUEST

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- w. Lance Corporal

APPELLATE EXHIBIT ✓

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- x. Lance Corporal (b)(6)
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- f. Staff Sergeant
- g. Staff sergeant
- h. Sergeant (b)(6)
- i. Sergeant
- j. Sergeant
- k. Sergeant
- l. Sergeant
- m. Corporal
- n. HM3 (b)(6)
- o. HM3
- p. Corporal (b)(6)
- q. Lance Corporal (b)(6)
- r. Lance Corporal
- s. Lance Corporal
- t. Lance Corporal
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3. A complete and legible copy of the Lance Corporal (b)(6) military health records.
4. The complete criminal record/background of (b)(6)
5. All records pertaining to (b)(6) service in the Iraqi Army.
6. All records pertaining to (b)(6) service to the Baath party in Iraq.
7. The complete criminal record/background of the (b)(6)
8. Contact information for all percipient witnesses involved in the fact pattern that the government considers 404(b) evidence. Specifically this includes but is not limited to Mr. (b)(6) and all BOP employees and all prisoners who made statements connected with this incident.

This discovery request is continuing and shall apply to any additional charges or specifications that may be preferred after this request for discovery is served on the government. Immediate written notification is requested on all items the government is unable or unwilling to produce.

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The defense reserves the right to make additional continuing discovery requests.

The defense requests a written response to this request.

/S/

W. A. Folk  
First Lieutenant  
U. S. Marine Corps  
Detailed Defense Counsel



**CERTIFICATE OF SERVICE**

This certifies that I served a copy of the foregoing on Trial Counsel by electronic mail on this 4<sup>TH</sup> of May 2004. 12<sup>th</sup>

/S/

W. A. FOLK

UNITED STATES MARINE CORPS  
GENERAL COURT-MARTIAL  
SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

Sergeant

U.S. Marine Corps

REQUEST FOR BILL OF  
PARTICULARS

12 May 2004

1. **Nature of the Motion:**

The defense respectfully requests that the government provide a bill of particulars regarding the following charges and specifications currently pending against Sergeant Pittman, the accused:

2. Charge I, Specification 1: Sergeant Pittman is charged with willful dereliction of duties. He is charged with willfully failing to properly safeguard the physical health, welfare, and treatment of unknown Iraqi prisoners of the Camp Whitehorse detention facility.

a. What duty or duties was Sergeant Pittman assigned while a member of the 2/25 assigned to the Camp Whitehorse detention facility.

b. When were those duties assigned?

c. By whom, or by what lawful order or custom of the service were they assigned?

d. What training, if any, was Sergeant Pittman provided regarding the proper execution of those duties?

e. In what manner was Sergeant Pittman derelict in the performance of the duties alleged in specification 1 of Charge I.

3. Charge I, Specification 2: Sergeant Pittman is charged with willful dereliction of duties. He is charged with willfully failing to properly safeguard the physical health, welfare, and treatment of

APPELLATE EXHIBIT 51

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(b)(6) as it was his duty to do.

a. What duty or duties was Sergeant Pittman assigned while a member of the 2/25 assigned to the Camp Whitehorse detention facility as they regarded (b)(6) on or about 4 June 2003.

b. When were those duties assigned?

c. By whom or by what lawful order or custom of the service were they assigned?

d. What training, if any, was Sergeant Pittman provided regarding the proper execution of those duties?

e. In what manner was Sergeant Pittman derelict in the performance of the duties alleged in specification 2 of Charge I.

4. Charge II, Specification 1: Sergeant Pittman is charged with assault by unlawfully striking unknown Iraqi prisoners between on or about 1 April 2003 and 30 June 2003.

a. Which prisoners is the government alleging that Sergeant Pittman unlawfully struck?

b. Where did these alleged assaults take place?

c. How many assaults is the government alleging?

d. Is the government alleging simple assault or assaults consummated by battery?

e. Where on the bodies of these alleged Iraqi victims is the government alleging that Sergeant Pittman struck them?

5. Charge II, Specification 2: Sergeant Pittman is charged with assault by unlawfully striking (b)(6) by punching him in the body with his hands.

a. Where in An Nasiriyah, Iraq, is the government alleging that his assault took place?

b. Is the government alleging that Sergeant Pittman struck (b)(6) with one hand or both hands?

The defense respectfully requests a written response to this request for a bill of particulars.

  
W. A. FOLK

+++++

I CERTIFY THAT I SERVED A COPY OF THIS BILL OF PARTICULARS ON  
GOVERNMENT COUNSEL ON <sup>12</sup> MAY 2004 VIA ELECTRONIC MAIL.

  
W. A. FOLK



**UNITED STATES MARINE CORPS**  
Legal Services Support Section  
1<sup>st</sup> Force Service Support Group, MarForPac  
Box 555606  
Camp Pendleton, California 92055-5607

5800  
TC/LJF  
7 Apr 04

From: Trial Counsel  
To: Detailed Defense Counsel

Subj: NOTICE OF WITNESSES, EXHIBITS, ADMISSIONS AND MRE 404B ICO U.S. V.  
SERGEANT G.P. PITTMAN (b)(6) /USMC

Ref: (a) RCM 701, MCM 2002

1. The purpose of this letter is to give the defense notice of those witnesses, exhibits, admissions made by the accused and MRE 404b evidence that the government intends to introduce at trial ico Sergeant Pittman per reference (a).

2. The government intends to call the following witnesses at trial:

a. Lieutenant Colonel (b)(6) - It is expected she would testify consistent with her Article 32 testimony. Her CV and contact information has been previously provided.

b. Commander (b)(6) It is expected he would testify consistent with his Article 32 testimony. His contact information has been previously provided.

c. Lieutenant Commander (b)(6) - It is expected he would testify consistent with his Article 32 testimony. His contact information has been previously provided.

d. Major (b)(6) - It is expected he would testify consistent with his Article 32 testimony. His contact information has been previously provided.

e. Staff Sergeant (b)(6) - It is expected he would testify consistent with his Article 32 testimony. His contact information has been previously provided.

f. Staff Sergeant (b)(6) It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

g. Staff Sergeant (b)(6) It is expected he would testify consistent with his Article 32 testimony. His contact information has been previously provided.

h. Sergeant (b)(6) It is expected he would testify consistent with his Article 32 testimony. His contact information has been previously provided.

i. Sergeant (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose APPELLATE EXHIBIT ✓

vic

this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

j. Sergeant (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

k. Sergeant (b)(6) - It is expected he would testify consistent with his Article 32 testimony. His contact information has been previously provided.

l. Sergeant (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

m. Corporal (b)(6) It is expected he would testify consistent with his Article 32 testimony. His contact information has been previously provided.

n. Hospitalman Third Class (b)(6) It is expected he would testify consistent with his Article 32 testimony. His contact information has been previously provided.

o. Hospitalman Third Class (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

p. Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

q. Lance Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

r. Lance Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

s. Lance Corporal (b)(6) It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

t. Lance Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose

APPELLATE EXHIBIT

this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

u. Lance Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

v. Lance Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

w. Lance Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

x. Lance Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

y. Lance Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

z. Lance Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

aa. Lance Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

bb. Lance Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

cc. Lance Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

dd. Lance Corporal (b)(6) - It is expected he would testify consistent with his statements to NCIS. The government intends to depose

this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

ee. Private First Class (b)(6) It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

ff. Private First Class (b)(6) It is expected he would testify consistent with his Article 32 testimony. His contact information has been previously provided.

gg. (b)(6) - It is expected he would testify concerning the tests he performed on the samples from (b)(6) His contact information was previously provided.

hh. NCIS Agent (b)(6) - It is expected he would testify about the NCIS investigation he conducted. His contact information was previously provided.

ii. Government intends to produce an expert in the field of International and Operational Law to discuss the duty imposed by law for the proper treatment and handling of EPWs and detainees. This individual has not been identified by the government at this time but prompt notice will be given once the identity of this individual is learned.

kk. Major (b)(6) It is expected he would testify consistent with his statements to NCIS. The government intends to depose this witness at a later date. The government will give the defense prompt notice of the time, date and place of deposition at a later date. The contact information for this witness has been previously provided.

3. The government intends to introduce the following exhibits:

- a. SRB of accused - Previously provided;
- b. Statement of the accused as given to (b)(6) and made a part of his investigation - Previously provided;
- c. Photos of (b)(6) taken at autopsy - Previously provided;
- d. Photos of (b)(6) taken before autopsy - Previously provided;
- e. Photos taken of Camp Whitehorse detention facility - Previously provided;
- f. Diagram of Camp Whitehorse detention facility - Similar to one used at Article 32;
- g. Diagram of detainee cell at Camp Whitehorse - Similar to the one used at Article 32;
- h. Report of autopsy for (b)(6) - Previously provided;
- i. Autopsy protocol for (b)(6) Previously provided;
- j. Certificate of death for (b)(6) - Previously provided;

APPELLATE EXHIBIT



- k. Toxicology Report for (b)(6) - Previously provided;
- l. 2/25 ROE Card - Previously provided;
- m. 2/25 SOP - Previously provided;
- n. Camp Whitehorse detention facility logbook entries for 3 to 6 June 2003.
- o. Photos of the unearthing of (b)(6); body - Previously provided.

4. The government intends to introduce the following admissions made by the accused or the accused's co-conspirators:

a. All statements as addressed during the Article 32 and as indicated in the NCIS investigation.

5. The government intends to introduce the following evidence under MRE 404b:

a. The accused's history of abuse as a domestic prison guard of prisoners of middle-eastern ethnicity as indicated in the NCIS investigation. Specifics on how the government will do this will come in subsequent correspondence.

6. The government reserves the right to modify, add or delete from what is described above. If the government learns of additional evidence that it would like to introduce at trial it will give the defense prompt notice.

/S/  
L. J. FRANCIS  
Major  
U.S. Marine Corps

Copy to:  
File

-----  
CERTIFICATE OF SERVICE

I hereby certify that on 7 April 2004, via electronic mail, a copy of this notification was served on the detailed defense counsel in the above entitled case.

/S/  
L. J. FRANCIS  
Major  
U.S. Marine Corps

GENERAL COURT MARTIAL  
UNITED STATES MARINE CORPS  
SIERRA JUDICIAL CIRCUIT

UNITED STATES	)	
	)	
v.	)	Government Answer to Defense Motion for
	)	Continuance
G.P. PITTMAN	)	
(b)(6)	)	
Sergeant	)	
U.S. Marine Corps Reserve	)	

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1. Nature of Answer. The government requests that the military judge deny the defense continuance request.
2. Summary of Facts. The government agrees with the defense recitation of the facts except to modify them as follows:

While it is true the defense has requested a bill of particulars and the government has yet to provide one, the basic facts as to the assaults on unknown Iraqi's have been the subject of the Art. 32 hearing and depositions. The defense should at this point know the government is looking at four victims of the accused from the evidence gathered at those hearings: 1) (b)(6) 2) unknown (b)(6) who was a prisoner at the facility during the same time as (b)(6) 3) unknown third victim who was assaulted by the accused as testified to by a Sgt (b)(6) during his deposition testimony, and 4) unknown Iraqi discussed in a LCpl (b)(6) sworn statement that was roughly treated by Sgt Pittman.

The reason the government has not and may not provide a bill of particulars is that nearly every witness in this case is hostile to the government and a potential accomplice of the accused. Most (22 witnesses) outright refused to cooperate for the Art. 32 hearing, thus causing the government to depose them after referral. Three of these witnesses still have yet to be deposed, but will be deposed within the next 30 days. The

defense will have full and fair opportunity to cross-examine these witnesses when deposed as they have for the other 19 witnesses who have been deposed so far in this case.

The government fears that if it provides the defense a bill of particulars that the witnesses will get wind of it and begin to modify their testimony in relation to it, in the hopes of absolving the accused of wrongdoing. For example, LCpl (b)(6) was seen by the trial counsel speaking alone with the accused prior to his deposition. At LCpl (b)(6) deposition he mysteriously could no longer remember the contents of his sworn statement to NCIS in which he implicated Sgt Pittman in the mistreatment of Iraqi prisoners. Even though he agreed he read the statement before he signed it and agreed he swore to the contents of the statement, he indicated he had exaggerated in major portions of the statement. This type of behavior is suspiciously similar to the conduct of the accused in influencing witnesses in the civilian investigation which is subject of the government's 404b motion.

As for other issues of discovery, the government is collecting this evidence for the defense (such as SRBs, OQRs, OMPFs) and they will be provided to the defense sometime within the next 30 days. As for the issue of the government's operational law expert, the government is still in the process of finding such an individual. JAM, JAO and the OpLaw Department at TJAGSA are engaged with me on this issue and I hope to identify the expert who will be provided within the next two weeks.

3. Discussion. The trial of the accused is scheduled to begin 9 August 2004. The defense and government agreed to these dates way back in April 2004 when the accused was arraigned. The purpose at that time for scheduling the trial so far out was to avoid

continuances due to the complex nature of the litigation in this case. To date, the total number of witnesses for both government and defense in this case is 41. All but a handful are civilians and require subpoenas. All but two are not local and require travel and lodging at government expense. The government has already served 16 subpoenas in this case to those witnesses who were deposed and were civilians.

The trial date is still six weeks away. We still have a motions hearing on 28 July 2004, scheduled for this case. The government is confident it can obtain any discovery required by the defense by that time. The government believes granting a 45 day continuance of the trial dates at this time is premature and unwarranted.

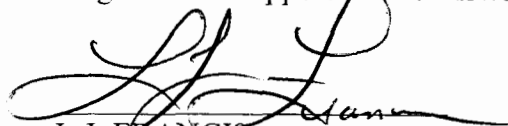
4. Relief Requested. The government requests that the defense motion for a continuance be denied.

5. Evidence. The government will provide no evidence on this motion.

6. Oral Argument. The government does desire oral argument in support of this answer.

25 June 04

Date



L.J. FRANCIS  
Major, USMC  
Trial Counsel

.....

I certify that on 25 June 2004, I caused a copy of this answer to be served on the defense counsel via electronic mail.



L.J. FRANCIS  
Major, USMC  
Trial Counsel

APPELLATE EXHIBIT VII

PAGE 3 OF 3

UNITED STATES MARINE CORPS  
GENERAL COURT-MARTIAL  
SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN  
(b)(6)  
Sergeant  
U.S. Marine Corps

MOTION FOR  
APPROPRIATE RELIEF

First Motion to Compel Appearance of  
Defense Witnesses

22 June 2004

1. **Nature of the Motion:**

The defense moves the court, pursuant to RCM 703, 905(b)(4), 906(b)(7) and 1001(e), Manual for Courts-Martial, 2002 and the Sixth Amendment to the US Constitution, to order the government to produce certain necessary and relevant material witnesses for the defense on the merits and possibly in sentencing.

2. **Summary of Facts:** Sergeant Pittman is facing charges related to alleged acts of misconduct by him while he worked as a guard at the Camp Whitehorse detention facility in An Nasiriyah, Iraq, during the summer of 2003. Specifically, he was a guard at Camp Whitehorse from some time in April 2003 until the summer of 2003. He is charged with dereliction of duty and assault consummated by a battery. The specific nature of the dereliction of duty charge remains unclear at this time, despite a defense request for a bill of particulars. The assault charges detail allegations of assault by Sergeant Pittman against unnamed detainees, and a detainee by the name of (b)(6). All of the witnesses requested by the defense are necessary and relevant to provide testimony regarding the charges that Sergeant Pittman is facing, his military character, or testimony in extenuation and mitigation, if necessary.

There is no significant overlap or cumulative testimony being offered by the requested

APPELLATE EXHIBIT VIII

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witnesses. Each witness covers either specific facts in issue at trial or provides good character testimony from a different period of time or military perspective from any other witness. The government claims that the requested defense witnesses are irrelevant or cumulative. The defense case depends on the fact that Sergeant Pittman is not the type of person or Marine who would either be derelict in the performance of his duties, or the type of Marine who would assault Iraqi detainees. Further, the defense intends to show Sergeant Pittman's character for using the appropriate amount of force as a guard at Camp Whitehorse.

Below is a list of the witnesses, excepting the experts, which the government has denied and why they are essential to the defense's case. The defense intends to request additional witnesses once discovery is completed and upon the receipt of a response to the requested bill of particulars from the government.

a. Major Walter D. Powers, USMCR. Major Powers was the S-3 officer for the Second Battalion, Twenty-Fifth Marine Regiment, during the time that the battalion was at Camp Whitehorse. He will provide testimony regarding the training that 2/25 provided to Marines working as guards at Camp Whitehorse, the procedures employed by 2/25 to prepare for their duties at Camp Whitehorse and the relationship between the Camp Whitehorse guards and the members of the Human Intelligence Exploitation Teams that worked out of Camp Whitehorse.

b. Lieutenant Colonel R. A. Dengler, USMCR, Second Battalion, Twenty-Fifth Marine Regiment. Ph# (212) 218-2100. Will testify as to conditions at Camp Whitehorse, detainee handling procedures and character evidence regarding Sergeant Pittman. He will provide testimony regarding the contact that he has with the Sheik, an individual who the defense believes that the government is alleging to be a victim of Sergeant Pittman, and followers of the Sheik. Lieutenant Colonel (b)(6) will provide evidence regarding the manner in which NCIS investigated the

situation regarding (b)(6) death at Camp Whitehorse. The manner in which the NCIS investigation was conducted is another important facet of the defense case for Sergeant Pittman.

Lieutenant Colonel (b)(6) can also provide unique testimony regarding training that was provided to 2/25 regarding the treatment of enemy prisoners of war while the battalion was at Camp Lejeune, prior to its deployment to Iraq. Lieutenant Colonel (b)(6) was responsible for the battalion's SOP as it related to EPW's at that time.

Finally, Lieutenant Colonel (b)(6) can provide testimony regarding the circumstances surrounding the Sheik, whom the defense believes that the government is alleging Sergeant Pittman assaulted. Lieutenant Colonel (b)(6) can provide unique testimony regarding guidance that was provided to the Marines at Camp Whitehorse regarding their treatment of the Sheik, and the interactions that Lieutenant Colonel (b)(6) had with the Sheik following his detention at Camp Whitehorse.

c. Sergeant Rajendra Singh, USMC. Sergeant Singh's testimony is necessary and relevant as a result of his presence at Camp White Horse while the 15th MEU was running the facility. He observed some turn over procedures and was able to observe what training and in-briefs were provided to Sergeant Pittman prior to Sergeant Pittman starting to work at Camp White Horse. Sergeant (b)(6) testimony will also illustrate that Sergeant Pittman has hit prisoners at Camp White Horse as a result of prisoners grabbing weapons from guards. This testimony is necessary and relevant to refute the specification alleging Sergeant Pittman's assault of "unknown" Iraqi prisoners. Sergeant (b)(6) was also the NCOIC of Camp Whitehorse while stationed at the camp. He will provide guidance as to the duties and responsibilities of the NCOIC of that Camp. As NCOIC he had the most direct contact with NCOs such as Sergeant Pittman, and junior marines, such as Sergeant Pittman's shift subordinates. He will provide the most relevant testimony

regarding the day-to-day duties that guards, such as Sergeant Pittman, had with regard to detainees at the Camp.

d. Major Morant Pittman, USAR. Major Morant is an Army Reservist serving in support of Operation Iraqi Freedom. He is a Transportation Officer working for the U.S. Army III CORPS as an LNO at Shuaiba Port, Kuwait. Sergeant Pittman is Major Morant's second youngest brother. As such he grew up with Sergeant Pittman and has an extensive knowledge of Sergeant Pittman's entire career of service to the U.S. military. To include time that Sergeant Pittman has spent on active duty in the Marine Corps, time in the Army reserves and national Major Morant Pittman will testify to Sergeant Pittman's character for truthfulness, his good military character, and his rehabilitative potential.

e. Captain David Ashe, USMCR. Ph# 757-961-3421. Captain Ashe was the SJA for the 2/5 Governate Support Team during Operation Iraqi Freedom. He was an eyewitness at the autopsy that was conducted on (b)(6). This autopsy was the basis for all of the physical evidence that exists regarding (b)(6) condition after he was deceased. He will provide testimony about the information that was made available to the doctor conducting the autopsy, the manner in which the autopsy was provided, and will explain his conclusions regarding the cause of death, which were different from those reached by the doctor conducting the autopsy.

f. Anna L. Pittman, Anna Pittman is Sergeant Pittman's mother. She will testify about his character for truthfulness, his reputation within their community, his rehabilitative potential, and will provide evidence in extenuation and mitigation on Sergeant Pittman's behalf.

g. Donna Pittman, Donna is Sergeant Pittman's sister. She is also an officer in the United States Navy Reserve. She will provide evidence his rehabilitative potential, his reputation within their family, and will provide evidence in extenuation and mitigation on Sergeant Pittman's behalf.



h. Major Clarke Paulus, USMC. I & I Staff, Second Battalion, Twenty-Fifth Marine Regiment. Major Paulus was the Officer in Charge of the Camp Whitehorse detention facility during the time that Sergeant Pittman was a guard assigned to that facility. Major Paulus was present during the time that (b)(6) was in-processed, and he was also present during the time that the Sheik was present at the Camp Whitehorse detention facility. Major Paulus will provide testimony regarding Sergeant Pittman's appropriate use of force during the time period that (b)(6), an alleged victim of Sergeant Pittman's assault and dereliction, was present at Camp White Horse. These facts cannot be provided by any other government witness at the commanding officer level. Major Paulus was also present at Camp Whitehorse when the Sheik, another alleged victim of Sergeant Pittman's assault and dereliction, was present at Camp Whitehorse.

i. Major (b)(6) USMCR, Second Battalion, Twenty-Fifth Marines. Major (b)(6) was the commandant of Camp White Horse in Iraq. Part of his duties as commandant of Camp White Horse was oversight of the camp. Major (b)(6) testimony is necessary and relevant to determine the guidance that was given to Marines working at Camp White Horse, specifically during the time that (b)(6) was a detainee at the Camp, regarding the treatment of Enemy Prisoners of War, and the training that was provided to the guards at Camp White Horse regarding the same subject. In addition, Major (b)(6) can provide evidence regarding the physical condition of (b)(6) on 5 June 2003 when he visited the camp, and whether he witnessed Sergeant Pittman strike (b)(6) at that time. Finally, as the Camp Commandant for Camp White Horse Major (b)(6) can testify about whether Sergeant Pittman's actions as the Marine often in charge of indoctrination for new Iraqi detainees was in line with his guidance as commandant.

j. Staff Sergeant (b)(6) USMCR, Second Battalion, Twenty-Fifth Marine Regiment. Staff Sergeant (b)(6) was the SNCOIC of the Camp Whitehorse facility during the turn-over of the

facility from the 15<sup>th</sup> MEU to 2/25. Staff Sergeant (b)(6) testimony is necessary to explain the training, guidance, and standard operating procedures that were provided to members of 2/25 from the unit turning over the facility. Staff Sergeant (b)(6) was the sole point of contact for the turnover of Camp Whitehorse from the 15<sup>th</sup> MEU to 2/25 (the fifteenth MEU preceded 2/25 at Camp Whitehorse). Staff Sergeant (b)(6) was the SNCOIC of Camp Whitehorse when Sergeant Pittman first arrived at the Camp and is necessary to establish that the standard of care to be given to prisoners and use of force towards prisoners by Sergeant Pittman was consistent with the instruction given by Staff Sergeant (b)(6).

3. **Discussion:**

All the requested witnesses denied by the Government are necessary, relevant and material to the defense in establishing Sergeant Pittman's defense and general denial of the misconduct charged. The defense also believes that none of the witnesses are cumulative. Each witness provides testimony that is unique to specific facts and certain observations or opinions. Additionally, the fact that Sergeant Pittman has established a life-long pattern of being truthful, trustworthy, law abiding, and has an impeccable military character is critical to rebutting and making less likely the claims of the government. Such testimony may in and of itself create a reasonable doubt as to the conduct alleged and the prosecution evidence produced.

The defense request is not elaborate. From a whole lifetime, the defense has selected a core group of witnesses to highlight how Sergeant Pittman behaved both professionally and socially, during not only the times alleged in the charge sheets, but also in other settings. The selection of witnesses is not some discretionary process by which the government determines who it feels is economical and convenient to produce. The defense is entitled to the production of all witnesses whose testimony is material, relevant and not cumulative.

In US v. Willis, 3 MJ 94 (1977), the defense requested several witnesses. After balancing the perceived benefit to the accused and the availability of the witnesses, the convening authority concluded that production was not necessary because they were difficult and expensive to produce. The court held that this type of balancing was legally defective. It further opined that "materiality" was not susceptible to gradation. The testimony of a given witness is either material or not material to the proceeding at hand. Once materiality is shown, the government must either produce the witness or abate the proceedings. US v. Carpenter, MJ 384 (1976).

The test concerning the production of witnesses was articulated by the Navy Marine Corps Court in the case of US v. Allen, 31 MJ 572 (NMCCA 1990). The court started by acknowledging that the right to compel the attendance of witnesses was not absolute; the defense first must demonstrate that the witnesses are material and necessary before any order to produce is required. US v. Jones, 20 MJ 919 (ACMR 1985). "Materiality" exists when the evidence supports the defense. Once the defense meets its burden the witnesses must be produced. US v. Dorgan 39 MJ 827 (ACCA 1994).

The court must address the issues involved in the case and the importance of the requested witness to those issues; whether a witness was desired on the merits or on sentencing; whether testimony of the witness would be merely cumulative; availability of alternatives to personal appearance, whether the witness is subject to military orders; and whether absence of the witness would adversely affect accomplishment of an important military mission or cause manifest injury to the service. Allen, supra.

Considerations other than materiality have no role in determining whether the government must produce a requested witness. Therefore, inconvenience, cost or distance of the witness from the place of trial are not considerations allowing the government to escape its responsibility for

providing witnesses.


The government, in its response to requested witnesses, does not even respond to the question of materiality or necessity which are the determining factors. It merely claims relevance is at issue.


The witnesses are desired on the merits and are essential to the case. Their testimony is not cumulative and no substitute for live witnesses exists in any satisfactory forms. Jones, supra.

4. **Nature of Relief:** The defense requests that the court order the production of all requested witnesses.

5. **Evidence:** The defense will present documentary evidence in support of this motion.

6. **Oral Argument:** The defense requests oral argument.

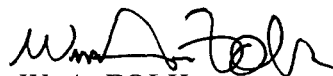
  
J. TRANBERG  
Civilian Defense Counsel

  
W. A. FOLK  
Captain, U.S. Marine Corps  
Defense Counsel

\*\*\*\*\*

Certificate of Service

I certify that a true copy of this motion was served on opposing counsel on this 22nd day of June, 2004.

  
W. A. FOLK  
Captain, U.S. Marine Corps  
Defense Counsel

APPELLATE EXHIBIT VIII

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**UNITED STATES MARINE CORPS**  
Legal Services Support Team Delta (Defense)  
1st Force Service Support Section  
Box 555607  
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5810  
LSST-D/waf  
15 June 04

From: Detailed Defense Counsel  
To: Commanding Officer, Marine Corps Base, Camp Pendleton, CA  
Via: Trial Counsel

Subj: REQUEST FOR PRODUCTION OF WITNESS FOR THE GENERAL COURT-MARTIAL OF  
SERGEANT GARY PITTMAN U.S. MARINE CORPS RESERVE

Ref: (a) Article 46, UCMJ  
(b) RCM 703(c)(2)(B), MCM, 2002

1. Pursuant to the references, the defense in the subject case respectfully requests that the following individuals be produced to testify at the trial or sentencing phase of the subject court-martial:

a. Lance Corporal (b)(6), USMCR, H&S Company, Second Battalion, Twenty-Fifth Marine Regiment. Contact information provided during deposition on 3 June 2004. A member of Camp White Horse guard staff. He will testify to procedures and processing of detainees at Camp Whitehorse. He will also provide testimony regarding (b)(6) physical condition while a detainee at the camp. He will also provide details regarding the extent of the training that he received while a member at Camp Whitehorse.

b. Major (b)(6), USMCR. Contact information provided during deposition. Major (b)(6) the initial OIC of Camp Whitehorse. He will testify regarding the training provided to guards at Camp Whitehorse, the level of care given to detainees by guards, and the levels of force that Marines were authorized to use as guards.

c. Sergeant (b)(6), USMCR. H & S Company, Second Battalion, Twenty-Fifth Marine Regiment. Contact information provided during deposition. He will provide testimony regarding the in-processing of Mr. (b)(6) Camp Whitehorse. He will also provide testimony regarding the handling of the (b)(6) and Sergeant Pittman's interactions with the (b)(6) at Camp Whitehorse.

d. Lance Corporal (b)(6), USMCR. H & S Company, Twenty-Fifth Marine Regiment. Contact information provided during deposition. Lance Corporal (b)(6) was a member of the guard force at Camp Whitehorse. He will testify as to (b)(6) physical condition during his time as a detainee at Camp Whitehorse. In addition, he will provide testimony regarding (b)(6) attitude towards his captors.

e. Mr. (b)(6) was a member of the human exploitation team attached to Camp Whitehorse. He provided translation for Marines during raids and interrogations. He interrogated for (b)(6) and acted as

APPELLATE EXHIBIT V(11)

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Subj: REQUEST FOR PRODUCTION OF WITNESS FOR THE GENERAL COURT-MARTIAL  
OF SERGEANT GARY PITTMAN U.S. MARINE CORPS RESERVE

a translator during his interrogation. (b)(6) can provide testimony about (b)(6) physical and mental condition during the interrogation.

f. Lance Corporal (b)(6), USMCR, H & S Company, Second Battalion, Twenty-Fifth Marine Regiment. Contact information provided during deposition. Lance Corporal (b)(6) was a member of Sergeant Pittman's guard shift during the time period that (b)(6) was a detainee at Camp Whitehorse. He will testify regarding his observations of Sergeant Pittman and Lance Corporal (b)(6) on the night of the alleged assault by Sergeant Pittman against (b)(6).

g. Lance Corporal (b)(6), USMCR, H & S Company, Second Battalion, Twenty-Fifth Marine Regiment. Lance Corporal (b)(6) was a member of the Camp Whitehorse guard facility. He was posted as a sentry during the time that Camp Whitehorse was approached by outside protestors. His testimony regarding this time period is relevant to refute allegations of assault against Sergeant Pittman. He was also a witness to (b)(6) physical condition shortly before he died.

h. HM1 (b)(6), USNR, H & S Company, Second Battalion, Twenty-Fifth Marine Regiment. Petty Officer (b)(6) was a corpsman assigned to work at Camp Whitehorse. He will provide testimony regarding how (b)(6) was inprocessed at Camp Whitehorse, how Lance Corporal (b)(6) treated and physically abused (b)(6), and inculpatory statements made by Lance Corporal (b)(6) to HM1 (b)(6).

(b)(6) Ph#: (b)(6) was a sergeant during his time as a member of Weapons Company, Second Battalion, Twenty-Fifth Marines. Sergeant Philbin will provide testimony regarding the careful manner in which Sergeant Pittman and Lance Corporal (b)(6) removed (b)(6) from a HMMVW prior to Mr. (b)(6) being in-processed at Camp Whitehorse.

j. Corporal (b)(6), H & S Company, Second Battalion, Twenty-Fifth Marine Regiment. Corporal (b)(6) was a member of the guard force at Camp Whitehorse. He will provide testimony regarding (b)(6) physical condition following his interview by the HET team. Additionally, he will testify about the water that he gave (b)(6).

k. Staff Sergeant (b)(6), USMCR, H & S Company, Second Battalion Twenty-Fifth Marine Regiment. Staff Sergeant (b)(6) was the SNCOIC of the Camp Whitehorse detention facility. He was present during the in-processing of (b)(6). He will testify about the use of force by Camp Whitehorse guards towards detainees. He will also testify about the training that was provided to guards at Camp Whitehorse.

l. Corporal (b)(6), USMCR. Contact number provided to defense by government prior to Article 32 hearing. Will provide testimony regarding the type of treatment that Sergeant Pittman said detainees should receive. He will also testify about the fact that (b)(6) was not compliant with orders from guards and that he was not compliant during the shift preceding Sergeant Pittman's shift.

m. Major (b)(6), USMCR. Contact information consistent with that when called by government during Major (b)(6) Article 32 hearing.

APPELLATE EXHIBIT U III

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Subj: REQUEST FOR PRODUCTION OF WITNESS FOR THE GENERAL COURT-MARTIAL  
OF SERGEANT GARY PITTMAN U.S. MARINE CORPS RESERVE

Second Battalion, Twenty-Fifth Marine Regiment. He was the S-3 officer for the battalion during the time that they were at Camp Whitehorse. He will provide testimony regarding the training that 2/25 provided to Marines working as guards at Camp Whitehorse, the procedures employed by 2/25 to prepare for their duties at Camp Whitehorse and the relationship between the Camp Whitehorse guards and the members of the Human Intelligence Exploitation Teams that worked out of Camp Whitehorse.

n. Lieutenant Colonel (b)(6) USMCR, Second Battalion, Twenty-Fifth Marine Regiment. (b)(6) Will testify as to conditions at Camp Whitehorse, detainee procedures, character evidence regarding Sergeant Pittman. He will provide testimony regarding the contact that he has with (b)(6) an alleged victim of Sergeant Pittman, and followers of the (b)(6) Lieutenant Colonel (b)(6) will provide evidence regarding the manner in which NCIS investigated the situation regarding (b)(6) death at Camp Whitehorse.

o. Lieutenant Commander (b)(6) H & S Company, Second Battalion, Twenty-Fifth Marine Regiment. (b)(6) LCDR (b)(6) was the battalion surgeon for 2/25 during the time they were deployed in Iraq. He will provide testimony regarding the condition of (b)(6) body after death, his observations of (b)(6) post-mortem, and his conclusions regarding the body's condition. He will also provide testimony regarding inculpatory statements made by Lance Corporal Roy to him following Mr. (b)(6) death.

p. Mr. (b)(6) He worked with Sergeant Pittman for 1.5 years in this capacity. He will testify to Sergeant Pittman's character for the appropriate use of force, his character for following orders and his character for truthfulness.

q. Sergeant (b)(6) USMC. Third Battalion. Second Marine Regiment. Camp Lejeune, North Carolina. (b)(6) Sergeant (b)(6) testimony is necessary and relevant as a result of his presence at Camp White Horse while the 15th MEU was running the facility, he observed some turn over procedures and was able to observe what training or in-briefs were provided to Sergeant Pittman prior to Sergeant Pittman starting to work at Camp White Horse. Sergeant (b)(6) testimony will also illustrate that Sergeant Pittman has hit prisoners at Camp White Horse as a result of prisoners grabbing weapons from guards. This testimony is necessary and relevant to refute the specification alleging Sergeant Pittman's assault of "unknown" Iraqi prisoners. Sergeant (b)(6) was also the NCOIC of Camp Whitehorse while stationed at the camp. He will provide guidance as to the duties and responsibilities of the NCOIC of that Camp.

q. Major Morant Pittman, USAR. 143<sup>rd</sup> TRANSCOM C2 III COPRS LNO Camp Spearhead Kuwait APO, A.E. 09305. Major (b)(6) is an Army Reservist serving in support of Operation Iraqi Freedom. He is a Transportation Officer working for the U.S. Army III CORPS as an LNO at Shuaiba Port, Kuwait. Sergeant Pittman is his second youngest brother. Major (b)(6) Pittman will testify to Sergeant Pittman's character for truthfulness and his rehabilitative potential.

APPELLATE EXHIBIT VIII

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Subj: REQUEST FOR PRODUCTION OF WITNESS FOR THE GENERAL COURT-MARTIAL  
OF SERGEANT GARY PITTMAN U.S. MARINE CORPS RESERVE

r. Commander (b)(6) . Commander (b)(6) was a battalion surgeon for Second Battalion, Twenty-Fifth Marine Regiment while the unit was assigned to guard prisoners at Camp Whitehorse in Iraq. Commander (b)(6) came into contact with (b)(6) dead body. He will testify that he dropped (b)(6) body at least two times while moving his body in the morgue where it was initially placed after leaving Camp Whitehorse. He will also provide testimony about the level of care that was available to detainees at Camp Whitehorse.

s. Captain (b)(6) : was the SJA for the 2/5 Governate Support Team during OIF. He was an eyewitness at the autopsy that was conducted on (b)(6). He will provide testimony about the information that was made available to the doctor conducting the autopsy, the manner in which the autopsy was provided, and will explain his conclusions regarding the cause of death, which were different from those reached by the doctor conducting the autopsy.

t. Gunnery Sergeant (b)(6) H & S Company, Second Battalion, Twenty-Fifth Marine Regiment. Ph# (516) 228-5671. Gunnery Sergeant (b)(6) was Sergeant Pittman's company gunner sergeant while Sergeant Pittman was a member of H & S company, Second Battalion, Twenty-Fifth Marine Regiment. He will provide testimony about Sergeant Pittman's good military character, his character for truthfulness, and his character for following orders and his rehabilitative potential.

u. (b)(6) (b)(6) is Sergeant Pittman's (b)(6). She will provide testimony about his character for truthfulness, his rehabilitative potential, and evidence in extenuation and mitigation about Sergeant Pittman's role as a financial provider in their family.

v. (b)(6) (b)(6) is Sergeant Pittman's mother. She will testify about his character for truthfulness, his reputation within their community, his rehabilitative potential, and will provide evidence in extenuation and mitigation on Sergeant Pittman's behalf.

w. x. (b)(6) (b)(6) Sergeant Pittman's sister. She is also an officer in the United States Navy Reserve. She will provide evidence his rehabilitative potential, his reputation within their family, and will provide evidence in extenuation and mitigation on Sergeant Pittman's behalf.

x. Major Clarke Paulus, USMC. I & I Staff, Second Battalion, Twenty-Fifth Marine Regiment. Major Paulus was the Officer in Charge of the Camp Whitehorse detention facility during the time that Sergeant Pittman was a guard assigned to that facility. Major Paulus was present during the time that (b)(6) was in-processed, and he was also present during the time that the Shiek was present at the Camp Whitehorse detention facility.

y. Major (b)(6) . USMCR. Second Battalion, Twenty-Fifth Marines. (b)(6) was the commandant of Camp White Horse in Iraq. Part of his duties as commandant of Camp White Horse was oversight of the camp. Major (b)(6) testimony is necessary and relevant to determine the guidance that was given to Marines working at Camp



Subj: REQUEST FOR PRODUCTION OF WITNESS FOR THE GENERAL COURT-MARTIAL  
OF SERGEANT GARY PITTMAN U.S. MARINE CORPS RESERVE

White Horse regarding the treatment of Enemy Prisoners of War, and the training that was provided to the guards at Camp White Horse regarding the same subject. In addition, Major (b)(6) can provide evidence regarding the physical condition of (b)(6) on 5 June 2003 when he visited the camp, and whether he witnessed Sergeant Pittman strike (b)(6) at that time. Finally, as the Camp Commandant for Camp White Horse Major (b)(6) can testify about whether Sergeant Pittman's actions as the Marine often in charge of indoctrination for new Iraqi detainees was in line with his guidance as commandant.

z. Major (b)(6) USMCR S-4, Second Battalion, Twenty-Fifth Marines. (b)(6) Major (b)(6) was Sergeant Pittman's OIC while Sergeant Pittman was activated in support of Operation Enduring Freedom from 2001 - 2002. He will testify to Sergeant Pittman's good military character. He observed Sergeant Pittman on a daily basis during this 2001 - 2002 time period.

aa. Staff Sergeant (b)(6) USMCR, Second Battalion, Twenty-Fifth Marine Regiment. (b)(6) Staff Sergeant (b)(6) was the SNCOIC of the Camp Whitehorse facility during the turn-over of the facility from the 15<sup>th</sup> MEU to 2/25. Staff Sergeant (b)(6) testimony is necessary to explain the training, guidance, and SOPs that were provided to members of 2/25 from the unit turning over the facility. Staff Sergeant (b)(6) was the sole POC for the turnover of Camp Whitehorse from the 15<sup>th</sup> MEU to 2/25. Staff Sergeant (b)(6) was the SNCOIC of Camp Whitehorse when Sergeant Pittman first arrived at the Camp and is necessary to establish that the standard of care to be given to prisoners and use of force towards prisoners by Sergeant Pittman was consistent with the instruction given by Staff Sergeant (b)(6).

2. These witnesses are necessary and relevant to the defense or extenuation and mitigation for the subject court-martial.

3. Due to the nature of the ongoing nature of the investigation of charges, the fact that transcripts from the depositions conducted from 2 - 8 June are not completed, and the fact that the defense is waiting on an answer to its 12 May 2004 request for a bill of particulars the defense will request additional witnesses at a later date. In addition, the defense intends to request an operational law expert once the government's expert is identified, a thoracic surgeon, a forensic pathologist, and an expert in the field of operating correctional facilities.

4. If it is the government's position that any of these witnesses will be unavailable for the court-martial, please inform defense counsel of this as soon as possible. The defense has not been provided the names of government witnesses, thereby subjecting this list to possible future changes.

/S/

J. TRANBERG & W. A. FOLK

---

I served a copy of this document via electronic copy and hard copy on trial counsel on 15 June 2004.

APPELLATE EXHIBIT VIII

PAGE 13 OF 16

/S/

J. TRANBERG & W. A. FOLK

APPELLATE EXHIBIT 2111  
PAGE 14 OF 16

## Folk Capt William A

**From:** Francis Maj Leon J  
**Sent:** Thursday, June 17, 2004 2:20 PM  
**To:** Folk Capt William A; (b)(6)  
**Subject:** FW: Witness request for Pittman

Gentlemen,

The government will provide all witnesses you requested except as indicated below for the below reasons. As a caveat, I am assuming you have spoken to GySgt (b)(6) Pittman and Major Legowski and they will be available for the trial dates? As long as they are available (meaning not out of the country or not deployed, imprisoned or incapacitated) then I will produce them. (b)(6) is pending charges so while I can produce him I cannot guarantee he will talk. Testimonial immunity is a possibility, but we can discuss this later once we know exactly what is going to happen with him.

I will try to get you a response to your discovery request by Monday COB. I will get you the BOP once I can get the transcript from the depositions.

Lastly, it looks like we are a lock for the depositions of (b)(6) for 28 or 29 June.

s/f  
Maj Francis

-----Original Message-----

**From:** Durrett Col William D  
**Sent:** Wednesday, June 16, 2004 10:29  
**To:** Francis Maj Leon J  
**Subject:** RE: Witness request for Pittman

-----Original Message-----

**From:** Francis Maj Leon J  
**Sent:** Wednesday, June 16, 2004 8:21 AM  
**To:** Durrett Col William D  
**Cc:** Lore Maj Joseph A  
**Subject:** FW: Witness request for Pittman

Sir,

Attached is the witness request for Pittman. I recommend approving all the named witnesses in the request except for the following:

1. (b)(6)
2. (b)(6)
3. (b)(6)
4. (b)(6)
5. (b)(6)
6. (b)(6)
7. (b)(6)
8. (b)(6)
9. (b)(6)
10. OPLAW Expert - Unnecessary.
11. Thoracic Surgeon - Unnecessary and irrelevant.
12. Forensic pathologist - Unnecessary.
13. Expert on correctional facilities - Irrelevant.

Please review and let me know if the CA agrees. The letter is addressed to the CA. Our response is due tomorrow by COB. Thank you, Sir.

V/R  
Maj Francis

-----Original Message-----

APPELLATE EXHIBIT 111

PAGE 15 OF 16

**From:** Folk Capt William A  
**Sent:** Tuesday, June 15, 2004 21:11  
**To:** Francis Maj Leon J  
**Cc:** 'johntranberg2@nctimes.net'  
**Subject:** Witness request for Pittman

Sir,

attached is our first request for witnesses per milestones and our phoncons of earlier today. We will submit follow-on witness requests prior to second motions hearings.

V/R

Capt. Folk & John Tranberg

---

Wm. Anders Folk  
Captain, USMC  
Judge Advocate  
LSSS-D  
Camp Pendleton, CA

Direct: 760-725-7715 DSN: 365-7715

Office: 760-725-7250 << File: Witness request for trial for Pittman.doc >>

Fax: 760-763-0586 DSN: 361-0586

GENERAL COURT MARTIAL  
UNITED STATES MARINE CORPS  
SIERRA JUDICIAL CIRCUIT

UNITED STATES	)	
	)	
v.	)	Government Answer to Defense Motion to Compel
	)	Appearance of Witnesses
G.P. PITTMAN	)	
(b)(6)	)	
Sergeant	)	
U.S. Marine Corps Reserve	)	

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1. Nature of Answer. The government requests that the military judge not order the government to produce certain witnesses named in the defense motion.
2. Summary of Facts. The government agrees with the defense recitation of the facts but disagrees with the commentary on the facts.
3. Discussion. The defense requested the production of 28 witnesses in its witness request of 15 June 2004. The government agreed to produce 19 of these 28 witnesses. The reasons why the government denied production of the other 9 are listed below:
  - a. Major W.D. Powers – The government agreed to produce Major (b)(6) who was the OIC of the detention facility of Camp Whitehorse from April to end of May 2003. Major (b)(6) best able to testify as to any issues regarding the detention facility. All Major Powers could provide is cumulative evidence to Major (b)(6) testimony.
  - b. Lieutenant Colonel R.A. Dengler – The government has agreed to produce Major (b)(6), SSgt (b)(6) and Major (b)(6) for trial. Major (b)(6) was the OIC of the detention facility for the majority of time it existed. SSgt (b)(6) was the SNCOIC of the detention facility the majority of the time it existed. Major (b)(6) was the Camp Commandant of Camp Whitehorse and had direct dealings with the (b)(6).

mentioned in the motion. These three witnesses are better able to address each and every issue named for the purpose of LtCol (b)(6). As a result, he is cumulative and unnecessary. As for the evidence he would provide as to his perceptions of the NCIS investigation, those perceptions are irrelevant.

c. Sergeant (b)(6) – The government has already agreed to produce a large number of guards who worked at the detention facility with the accused. The government has already agreed to produce SSgt (b)(6) and Major (b)(6) who were the SNCOIC and OIC of the detention facility, respectively. As a result, Sgt (b)(6) testimony is cumulative.

d. Major (b)(6) – According to the defense proffer, this witness is deployed thus unavailable. The government would be willing to permit substitutes for testimony, such as telephonic testimony or stipulation of expected testimony if the defense can provide some written documentation confirming what this witness would say and some contact information.

e. Captain (b)(6) – This witness is irrelevant. Captain (b)(6) was a Marine Judge Advocate. He may have observed the autopsy, but he is not a trained pathologist so his conclusions as to cause of death or his perceptions as to the procedures employed in performing the autopsy are lacking in any foundation and are irrelevant.

f. Ms. (b)(6) – This witness is cumulative with Mrs. (b)(6) wife of accused, whom the government has already agreed to produce for trial. In addition the government would be willing to allow substitutes for in court testimony such as telephonic testimony or a stipulation of expected testimony so long as the government is provided any and all statements or evidence taken from this witness by the defense.

g. Ms. (b)(6) - Same reasoning as given in paragraph f.

h. Major Clarke Paulus - Major Paulus is pending charges in relation to Mr. (b)(6) the same victim as Sgt Pittman. As a result, he is unavailable and will not testify of his own volition. Additionally, his testimony is cumulative with already produced witnesses such as Major (b)(6) SSgt (b)(6) and the guards indicated in the defense request.

i. Major (b)(6) The government has agreed to produce this witness. This witness is currently not pending charges, but may be in the near future in regards to his involvement in the alleged maltreatment of (b)(6) He may invoke his rights under 31b when produced, though. The issue of whether this witness will be granted testimonial immunity is yet to be decided.

j. Staff Sergeant (b)(6) This witness is cumulative with Major (b)(6) and SSgt (b)(6) While it is true he was SNCOIC prior to the arrival of Major (b)(6) and SSgt (b)(6) they both could testify as to the turnover. At this time the government has no evidence that would suggest the accused mistreated or assaulted prisoners while SSgt (b)(6) was SNCOIC, but only during the tenure of Major (b)(6) SSgt (b)(6) and Major Paulus. As a result, this witness is irrelevant as well.

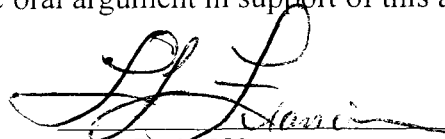
4. Relief Requested. The government requests that the defense motion for production of the above named witnesses be denied.

5. Evidence. The government will provide the following evidence:

- a. Defense witness request dtd 15 June 2004;
- b. Government answer to witness request dtd 17 June 2004.

6. Oral Argument. The government does desire oral argument in support of this answer.

25 June 04  
Date

  
L.J. FRANCIS  
Major, USMC  
Trial Counsel

.....

I certify that on 25 June 2004, I caused a copy of this answer to be served on the defense counsel via electronic mail.

  
L.J. FRANCIS  
Major, USMC  
Trial Counsel



**Francis Maj Leon J**

**From:** Francis Maj Leon J  
**Sent:** Thursday, June 17, 2004 2:20 PM  
**To:** Folk Capt William A (b)(6)  
**Subject:** FW: Witness request for Pittman

Gentlemen,

The government will provide all witnesses you requested except as indicated below for the below reasons. As a caveat, I am assuming you have spoken to GySgt (b)(6) and Major Legowski and they will be available for the trial dates? As long as they are available (meaning not out of the country or not deployed, imprisoned or incapacitated) then I will produce them. (b)(6) is pending charges so while I can produce him I cannot guarantee he will talk. Testimonial immunity is a possibility, but we can discuss this later once we know exactly what is going to happen with him.

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Maj Francis

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**Sent:** Wednesday, June 16, 2004 10:29  
**To:** Francis Maj Leon J  
**Subject:** RE: Witness request for Pittman

-----Original Message-----

**From:** Francis Maj Leon J  
**Sent:** Wednesday, June 16, 2004 8:21 AM  
**To:** Durrett Col William D  
**Cc:** Lore Maj Joseph A  
**Subject:** FW: Witness request for Pittman

Sir,

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1. (b)(6)
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4. (b)(6)
5. (b)(6)
6. (b)(6)
7. (b)(6)
8. (b)(6)
9. (b)(6)
10. OPLAW Expert - Unnecessary.
11. Thorasic Surgeon - Unnecessary and irrelevant.
12. Forensic pathologist - Unnecessary.
13. Expert on correctional facilities - Irrelevant.

Please review and let me know if the CA agrees. The letter is addressed to the CA. Our response is due tomorrow by COB. Thank you, Sir.

V/R  
Maj Francis

-----Original Message-----

APPELLATE EXHIBIT IX

PAGE 5 OF 11

**From:** Folk Capt William A  
**Sent:** Tuesday, June 15, 2004 21:11  
**To:** Francis Maj Leon J  
**Cc:** 'johntranberg2@nctimes.net'  
**Subject:** Witness request for Pittman

Sir,

attached is our first request for witnesses per milestones and our phoncons of earlier today. We will submit follow-on witness requests prior to second motions hearings.

V/R  
Capt. Folk & John Tranberg

---

Wm. Anders Folk  
Captain, USMC  
Judge Advocate  
LSSS-D  
Camp Pendleton, CA

Direct: 760-725-7715 DSN: 365-7715  
Office: 760-725-7250 << File: Witness request for trial for Pittman.doc >>  
Fax: 760-763-0586 DSN: 361-0586

**Tracking:**

**Recipient**

Folk Capt William A  
'JOHNTRAMBURG2@NCTIMES.NET'

**Read**

Read: 6/17/2004 2:22 PM

APPELLATE EXHIBIT IX

PAGE 6 OF 11



**UNITED STATES MARINE CORPS**  
Legal Services Support Team Delta (Defense)  
1st Force Service Support Section  
Box 555607  
Camp Pendleton, California 92055-5607  
Ph (760) 721-7551; Fax (760) 763-0586

5810  
LSST-D/waf  
15 June 04

From: Detailed Defense Counsel  
To: Commanding Officer, Marine Corps Base, Camp Pendleton, CA  
Via: Trial Counsel

Subj: REQUEST FOR PRODUCTION OF WITNESS FOR THE GENERAL COURT-MARTIAL OF  
SERGEANT GARY PITTMAN U.S. MARINE CORPS RESERVE

Ref: (a) Article 46, UCMJ  
(b) RCM 703(c)(2)(B), MCM, 2002

1. Pursuant to the references, the defense in the subject case respectfully requests that the following individuals be produced to testify at the trial or sentencing phase of the subject court-martial:

a. Lance Corporal (b)(6) USMCR, H&S Company, Second Battalion, Twenty-Fifth Marine Regiment. Contact information provided during deposition on 3 June 2004. A member of Camp White Horse guard staff. He will testify to procedures and processing of detainees at Camp Whitehorse. He will also provide testimony regarding (b)(6) physical condition while a detainee at the camp. He will also provide details regarding the extent of the training that he received while a member at Camp Whitehorse.

b. Major W(b)(6) USMCR. Contact information provided during deposition. Major (b)(6) was the initial OIC of Camp Whitehorse. He will testify regarding the training provided to guards at Camp Whitehorse, the level of care given to detainees by guards, and the levels of force that Marines were authorized to use as guards.

c. Sergeant (b)(6) USMCR. H & S Company, Second Battalion, Twenty-Fifth Marine Regiment. Contact information provided during deposition. He will provide testimony regarding the in-processing of Mr. (b)(6) at Camp Whitehorse. He will also provide testimony regarding the handling of the (b)(6) and Sergeant Pittman's interactions with the (b)(6) at Camp Whitehorse.

d. Lance Corporal (b)(6) USMCR. H & S Company, Twenty-Fifth Marine Regiment. Contact information provided during deposition. Lance Corporal (b)(6) was a member of the guard force at Camp Whitehorse. He will testify as to (b)(6) physical condition during his time as a detainee at Camp Whitehorse. In addition, he will provide testimony regarding (b)(6) attitude towards his captors.

e. (b)(6) was a member of the human exploitation team attached to Camp Whitehorse. He provided translation for Marines during raids and interrogations. He interrogated for (b)(6) and acted as

APPELLATE EXHIBIT IX

PAGE

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Subj: REQUEST FOR PRODUCTION OF WITNESS FOR THE GENERAL COURT-MARTIAL  
OF SERGEANT GARY PITTMAN U.S. MARINE CORPS RESERVE

a translator during his interrogation. Mr. Althaibani can provide testimony about (b)(6) physical and mental condition during the interrogation.

f. Lance Corporal (b)(6) USMCR, H & S Company, Second Battalion, Twenty-Fifth Marine Regiment. Contact information provided during deposition. Lance Corporal (b)(6) was a member of Sergeant Pittman's guard shift during the time period that (b)(6) was a detainee at Camp Whitehorse. He will testify regarding his observations of Sergeant Pittman and Lance Corporal (b)(6) on the night of the alleged assault by Sergeant Pittman against (b)(6)

g. Lance Corporal (b)(6) USMCR. H & S Company, Second Battalion, Twenty-Fifth Marine Regiment. Lance Corporal (b)(6) was a member of the Camp Whitehorse guard facility. He was posted as a sentry during the time that Camp Whitehorse was approached by outside protestors. His testimony regarding this time period is relevant to refute allegations of assault against Sergeant Pittman. He was also a witness to (b)(6) physical condition shortly before he died.

h. HM1 (b)(6) JSNR. H & S Company, Second Battalion, Twenty-Fifth Marine Regiment. Petty Officer (b)(6) a corpsman assigned to work at Camp Whitehorse. He will provide testimony regarding how (b)(6) was inprocessed at Camp Whitehorse, how Lance Corporal (b)(6) treated and physically abused (b)(6), and inculpatory statements made by Lance Corporal (b)(6) to HM1 (b)(6)

i. (b)(6) i. Ph#: (b)(6) was a sergeant during his time as a member of Weapons Company, Second Battalion, Twenty-Fifth Marines. Sergeant Philbin will provide testimony regarding the careful manner in which Sergeant Pittman and Lance Corporal (b)(6) removed (b)(6) from a HMMVW prior to Mr. (b)(6) being in-processed at Camp Whitehorse.

j. Corporal (b)(6) H & S Company. Second Battalion, Twenty-Fifth Marine Regiment. Corporal (b)(6) was a member of the guard force at Camp Whitehorse. He will provide testimony regarding (b)(6) physical condition following his interview by the HET team. Additionally, he will testify about the water that he gave (b)(6)

k. Staff Sergeant (b)(6) USMCR. H & S Company. Second Battalion Twenty-Fifth Marine Regiment. Staff Sergeant (b)(6) was the SNCOIC of the Camp Whitehorse detention facility. He was present during the in-processing of (b)(6). He will testify about the use of force by Camp Whitehorse guards towards detainees. He will also testify about the training that was provided to guards at Camp Whitehorse.

l. Corporal (b)(6) USMCR. Contact number provided to defense by government prior to Article 32 hearing. Will provide testimony regarding the type of treatment that Sergeant Pittman said detainees should receive. He will also testify about the fact that (b)(6) was not compliant with orders from guards and that he was not compliant during the shift preceding Sergeant Pittman's shift.

m. Major (b)(6), USMCR. Contact information consistent with that when called by government during Major (b)(6) Article 32 hearing.

Subj: REQUEST FOR PRODUCTION OF WITNESS FOR THE GENERAL COURT-MARTIAL  
OF SERGEANT GARY PITTMAN U.S. MARINE CORPS RESERVE

Second Battalion, Twenty-Fifth Marine Regiment. He was the S-3 officer for the battalion during the time that they were at Camp Whitehorse. He will provide testimony regarding the training that 2/25 provided to Marines working as guards at Camp Whitehorse, the procedures employed by 2/25 to prepare for their duties at Camp Whitehorse and the relationship between the Camp Whitehorse guards and the members of the Human Intelligence Exploitation Teams that worked out of Camp Whitehorse.

n. Lieutenant Colonel (b)(6) USMCR, Second Battalion, Twenty-Fifth Marine Regiment. (b)(6) Will testify as to conditions at Camp Whitehorse, detainee procedures, character evidence regarding Sergeant Pittman. He will provide testimony regarding the contact that he has with the Shiek, an alleged victim of Sergeant Pittman, and followers of the Shiek. Lieutenant Colonel (b)(6) will provide evidence regarding the manner in which NCIS investigated the situation regarding (b)(6) death at Camp Whitehorse.

o. Lieutenant Commander (b)(6) H & S Company, Second Battalion, Twenty-Fifth Marine Regiment. (b)(6) LCDR (b)(6) was the battalion surgeon for 2/25 during the time they were deployed in Iraq. He will provide testimony regarding the condition of (b)(6) body after death, his observations of (b)(6) post-mortem, and his conclusions regarding the body's condition. He will also provide testimony regarding inculpatory statements made by (b)(6) to him following Mr. (b)(6) death.

p. (b)(6)  
(b)(6) He worked with Sergeant Pittman for 1.5 years in this capacity. He will testify to Sergeant Pittman's character for the appropriate use of force, his character for following orders and his character for truthfulness.

q. Sergeant (b)(6) USMC. Third Battalion. Second Marine Regiment. Camp Lejeune, North Carolina. (b)(6) Sergeant (b)(6) testimony is necessary and relevant as a result of his presence at Camp White Horse while the 15th MEU was running the facility, he observed some turn over procedures and was able to observe what training or in-briefs were provided to Sergeant Pittman prior to Sergeant Pittman starting to work at Camp White Horse. Sergeant (b)(6) testimony will also illustrate that Sergeant Pittman has hit prisoners at Camp White Horse as a result of prisoners grabbing weapons from guards. This testimony is necessary and relevant to refute the specification alleging Sergeant Pittman's assault of "unknown" Iraqi prisoners. Sergeant (b)(6) was also the NCOIC of Camp Whitehorse while stationed at the camp. He will provide guidance as to the duties and responsibilities of the NCOIC of that Camp.

q. Major (b)(6) USAR. 143<sup>rd</sup> TRANSCOM C2 III COPRS LNO Camp Spearhead Kuwait APO, A.E. 09305. Major (b)(6) is an Army Reservist serving in support of Operation Iraqi Freedom. He is a Transportation Officer working for the U.S. Army III CORPS as an LNO at Shuaiba Port, Kuwait. Sergeant Pittman is his second youngest brother. Major Morant Pittman will testify to Sergeant Pittman's character for truthfulness and his rehabilitative potential.

Subj: REQUEST FOR PRODUCTION OF WITNESS FOR THE GENERAL COURT-MARTIAL  
OF SERGEANT GARY PITTMAN U.S. MARINE CORPS RESERVE

White Horse regarding the treatment of Enemy Prisoners of War, and the training that was provided to the guards at Camp White Horse regarding the same subject. In addition, Major (b)(6) can provide evidence regarding the physical condition of (b)(6) on 5 June 2003 when he visited the camp, and whether he witnessed Sergeant Pittman strike (b)(6) at that time. Finally, as the Camp Commandant for Camp White Horse Major (b)(6) can testify about whether Sergeant Pittman's actions as the Marine often in charge of indoctrination for new Iraqi detainees was in line with his guidance as commandant.

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2. These witnesses are necessary and relevant to the defense or extenuation and mitigation for the subject court-martial.

3. Due to the nature of the ongoing nature of the investigation of charges, the fact that transcripts from the depositions conducted from 2 - 8 June are not completed, and the fact that the defense is waiting on an answer to its 12 May 2004 request for a bill of particulars the defense will request additional witnesses at a later date. In addition, the defense intends to request an operational law expert once the government's expert is identified, a thoracic surgeon, a forensic pathologist, and an expert in the field of operating correctional facilities.

4. If it is the government's position that any of these witnesses will be unavailable for the court-martial, please inform defense counsel of this as soon as possible. The defense has not been provided the names of government witnesses, thereby subjecting this list to possible future changes.

/S/

J. TRANBERG & W. A. FOLK

---

I served a copy of this document via electronic copy and hard copy on trial counsel on 15 June 2004.

APPELLATE EXHIBIT IV

PAGE 10 OF 10

/S/

J. TRANBERG & W. A. FOLK

APPELLATE EXHIBIT IX  
PAGE 11 OF 11

UNITED STATES MARINE CORPS  
GENERAL COURT-MARTIAL  
SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

Sergeant

U.S. Marine Corps Reserve

MOTION FOR  
APPROPRIATE RELIEF

Compel Forensic Pathologist Expert for  
Defense  
Dr. Brian Peterson, M.D.

22 June 2004

1. **Nature of the Motion:** Pursuant to RCM's 703 and 906(b), the defense moves the court to order the production of Dr. Brian Peterson, MD. in the subject trial.
2. **Summary of Facts:** Sergeant Gary Pittman (hereinafter, "Sergeant Pittman") was a member of Second Battalion, Twenty-Fifth Marines (hereinafter, "2/25") assigned to work as a guard at the Camp Whitehorse Detention Facility, located in An Nasiriyah, Iraq, in April 2004. Sergeant Pittman worked at Camp Whitehorse until July 2003.

One of the detainees that stayed at Camp Whitehorse was an Iraqi, (b)(6) (hereinafter, (b)(6)) was captured during a raid conducted by Weapons Company, 2/25. (b)(6) was brought to Camp Whitehorse shortly after his capture on 3 June 2003. Following his capture he was strip-searched, interrogated, and detained at Camp Whitehorse. Sometime on the early morning of 6 June 2003 (b)(6) was found dead in the recreation area of the Camp Whitehorse detention facility.

Following (b)(6) death an autopsy was conducted by Lieutenant Colonel (b)(6), MC, USA (hereinafter, "Lieutenant Colonel (b)(6)"). This autopsy listed Mr. (b)(6) manner of death as "homicide," the cause of his death as "strangulation," and listed



numerous injuries on (b)(6) extremities, head, neck and torso. The autopsy also stated that (b)(6) "died as a result of asphyxia (lack of oxygen to the brain) due to strangulation as evidenced by the recently fractured hyoid bone in the neck. Additional findings include blunt force injuries, predominantly recent contusions (bruises), on the torso and lower extremities." (Enclosure, autopsy report). Lieutenant Colonel (b)(6) testified at length regarding her autopsy report and findings at the Sergeant Pittman's Article 32 hearing. (Enclosure, transcript excerpts of Lieutenant Colonel (b)(6) testimony).

On 18 November 2003 defense counsel requested expert assistance in the field of forensic pathology to assist defense counsel in preparation for the Article 32 investigation against Sergeant Pittman. (Enclosure, defense request dated 18 November 2003). That request was denied in an undated letter from the staff judge advocate to the division. (Enclosure, undated denial letter). The defense renewed its request for the expert assistance of a forensic pathologist in its witness request dated 15 June 2004. The government also denied the second defense request for expert assistance. (Enclosure, Government response to defense request).

Dr. Peterson is a board-certified forensic pathologist trained at the Armed Forces Institute of Pathology in Washington, D.C. He is certified in Combined Anatomic and Clinical Pathology and in Forensic Pathology. He has worked as the battalion surgeon for First Battalion, Ninth Marine Regiment, as a Staff Pathologist at the Armed Forces Institute of Pathology, and as the Regional Medical Examiner at the Office of the Armed Forces Medical Examiner. (Enclosure, Peterson CV).

3. **Discussion:** There is no question that Dr. Peterson meets all of the qualifications of an expert testifying in a well-recognized field as required by MRE's 703 and 702. He is trained in an area that is beyond the knowledge of the fact finder and his ability to interpret Lieutenant Colonel (b)(6) autopsy report, the evidence taken during the autopsy, and all of the evidence that

pertains to (b)(6) physical condition at the time of his death goes to the heart of the defense case.

RCM 703(d) provides that an expert witness request denied by the convening authority may be renewed by the defense before the military judge who will determine if the expert is relevant and necessary. CAAF has stated a three-prong test for determining whether expert assistance is necessary: first, why the expert assistance is needed. Second, what would the expert assistance accomplish for the accused. Third, why is the defense counsel unable to gather and present the evidence that the expert assistant would be able to develop. U.S. v. Ford, 51 MJ 445 (1999)

The accused must demonstrate more than a mere possibility of assistance from a requested expert before the accused can be appointed an expert. US v. Kinsler, 24 MJ 855 (ACMR 1987). The assistance that Dr. Peterson can render the defense team in this case is enormous. First, he can provide the defense with expert assistance in understanding the autopsy conducted by Lieutenant Colonel (b)(6). This will allow the defense to adequately and intelligently cross-examine Lieutenant Colonel (b)(6) when she is called in the government's case in chief, on both the methodologies that she utilized in conducting her autopsy and the ultimate conclusions that she reached after conducting the autopsy. Secondly, Dr. Peterson can reach independent conclusions regarding the types of forces, if any, that could cause the injuries found on (b)(6) body at the time that the autopsy was conducted. At a minimum, the defense can be expected to reap the same benefit from its own forensic pathologist that the government has reaped from theirs.

The defense counsel operating independently are not able to gather and present the testimony and assistance that Dr. Peterson can provide. Defense counsel are not trained in forensic pathology specifically, or in medicine generally. As evidenced by both Dr. Peterson's and Lieutenant Colonel (b)(6) CVs, there is a great deal of education required to work as a

forensic pathologist. Additionally, the testimony of Lieutenant Colonel (b)(6) provides great insight into the depth of knowledge that is possessed by an forensic pathologist. This expertise is far in excess of anything that defense lawyers will be able to gather and present without expert assistance.


The military judge is the "gate keeper" whose role it is to screen expert testimony to make sure it is relevant and reliable. General Electric v. Joiner, 522 US 136 (1997). Clearly the many aspects of Dr. Peterson's testimony are both relevant and material to all of the charges on the charge sheet as stated above. Expert testimony is admissible if it is reliable, relevant and its probative value substantially outweighs its prejudice. US v. St. Jean, 45 MJ 435, 444 (1996). The historical precedent for introduction of expert testimony in the field of forensic pathology is clearly established. Each of the six factors in Daubert v. Merrell Dow Pharmaceuticals, 509 US 579 (1993) has been met. These factors include 1) The qualification of the expert, MRE 702; 2) The subject matter of the expert testimony, MRE 702; 3) The basis for the expert testimony, MRE 703; 4) The legal relevance of the evidence, MRE 401, 402; 5) The reliability of the evidence, MRE 401 and 6) Whether the probative value of the evidence outweighs other considerations, MRE 403. Dr. Peterson has, like other forensic pathologists in his field has been doing assessments of autopsy reports and assessments of physical evidence, for years.


The defense has the right to present an adequate defense that includes going forward with a presentation of its own evidence and necessarily includes the right to prepare in a timely fashion and prepare motions. U.S. v. Allen, 31 MJ 572 (NMCCA 1990). The government is obligated to provide expert assistance so that the defense can acquire knowledge necessary for preparing and presenting its defense. U.S. v. Mann, 30 MJ 639 (NMCCA 1990).

4. **Nature of Relief:** The defense moves the court to grant the defense request for Dr.

Peterson.

5. **Evidence:** The defense will present documentary evidence and requests that the following witnesses be made available for the motion:
6. **Oral Argument:** The defense requests oral argument.

  
J. TRANBERG  
Civilian Defense Counsel

  
W. A. FOLK  
Military Defense Counsel

---

CERTIFICATE OF SERVICE

A true copy of this motion was served on Government Counsel by physical service and electronic service on 22 June 2004, by Captain Folk.

  
W. A. FOLK

## CURRICULUM VITAE

NAME:

(b)(6)

PERSONAL DATA:

### EDUCATION AND DEGREES:

1968 - 1971	Michigan State University
1975 - 1978	Arizona State University
	Bachelor of Science, Medical Technology
1982 - 1986	Medical College of Pennsylvania
	Doctor of Medicine
1986 - 1987	Tripler Army Medical Center, Hawaii
	Transitional Internship
1987 - 1991	Tripler Army Medical Center, Hawaii
	Residency in Pathology
1993 - 1994	Armed Forces Institute of Pathology / Office of the Chief
	Medical Examiner - Baltimore, Maryland
	Fellowship in Forensic Pathology

### LICENSURES:

1978	Medical Technologist - American Society for Clinical Pathology, Board of Registry; National Certification Agency
1985	Emergency Medical Technician - Pennsylvania
1987	National Board of Medical Examiners
1990	Licensed Physician and Surgeon State of Hawaii (MD - 6710)
1992	American Board of Pathology-Anatomic and Clinical Pathology
1994	American Board of Pathology-Forensic Pathology

### PROFESSIONAL EXPERIENCE:

1978 - 1982	Medical Technologist
1991 - 1993	Staff Pathologist - US Army Hospital, Korea
1994 - 1998	Armed Forces Regional Medical Examiner; Staff Pathologist - Tripler Army Medical Center
	Medical Director, Autopsy Section
	Medical Director, Transfusion Medicine Services
	Medical Director, Immunohistochemistry
	Assistant Chief, Education
1998 - 2000	Staff Pathologist - Medical Director, Transfusion Services - Landstuhl Regional Medical Center
1998 - present	Armed Forces Regional Medical Examiner - EUCOM/CENTCOM
	Forensic Consultant, U.S. Air Force Europe
	Forensic Consultant, U.S. Army Europe

#### HONORS AND AWARDS

1978	Phi Beta Kappa
1978	Graduated Summa Cum Laude, ASU
1993 - 2001	Awarded Meritorious Service Medals (three)
1999	Awarded Army Commendation Medal
2000	Awarded Kosovo Campaign Medal
2000	Awarded Nato Medal Kosovo
2002	Order of Military Medical Merit
2003	Awarded Bronze Star for valor

#### PROFESSIONAL ASSOCIATIONS:

1978	Phi Beta Kappa Society
1986	American Medical Association
1987	Hawaii Society of Pathologists
1994 -1996	Secretary / Treasurer
1997-1998	President Elect
1991	American Academy of Forensic Sciences, Member
	National Association of Medical Examiners

#### PUBLICATIONS/PRESENTATIONS:

RAPID REMISSION OF A LARGE PLEOMORPHIC RHABDOMYOSARCOMA WITH RADIATION AND NOVEL SCHEDULE OF SIMULTANEOUS HI-DOSE CISPLATIN; Uphouse WJ, Lee M, (Fleet) (b)(6) "Cancer Therapeutics," Vol. 5., No. 4, 1989.

COMPARISON OF STANDARD CULTURE METHODS, SHELL VIAL ASSAY AND DNA PROBE FOR THE DETECTION OF HSV; Seal LA, (b)(6) et al; "Journal of Clinical Microbiology," Vol. 29, No 3., Mar 1991.

MICRO AND MACROSCOPIC STAINING IN HIP PROSTHESES; Pitcher D, (Fleet) (b)(6) Poster Presentation at the Western Orthopedic Society Annual Meeting, 1989.

PRIMARY INTRACRANIAL HISTIOCYTIC LYMPHOMA OF MONOCYTE - MACROPHAGE ORIGIN; (b)(6) Hardman JM, and Sakas EL; Presented to the Hawaii Pathology Society Annual Meeting, 1991

FINE NEEDLE ASPIRATION CYTOLOGY DIAGNOSIS OF DISSEMINATED COCCIDIOIDOMYCOSIS Presented to the 38th Parallel Medical Society Meeting, 1992.

STRATEGIES FOR OPTIMIZING THE MILITARY BLOOD SUPPLY Presented at the VII Asian-Pacific Military Medicine Conference, Kuala Lumpur, Malaysia, March 1997.

CLINICO-PATHOLOGIC CORRELATION OF AUTOPSY FINDINGS

Presented at Tripler Army Medical Center Superheroes Program, 1 October 1997.

CLINICAL INVESTIGATION OF OXYGEN CARRYING HEMOGLOBIN SOLUTIONS

Presented at the Armed Services Blood Program Conference, Seoul, Korea, February 1998

STRATEGIES FOR OPTIMIZING THE MILITARY BLOOD SUPPLY-UPDATE ON RECENT ADVANCES

Presented at the VIII Asian-Pacific Military Medicine Conference, Auckland, New Zealand, April 1998.

FORENSIC PHOTOGRAPHY & GUNSHOT WOUNDS

Presented at AFIP/FBI Death Investigation Seminar, Garmisch, Germany, March 1999

MEDICO-LEGAL DEATH INVESTIGATION IN MILITARY OVERSEAS

Presented at the 7th American-Hungarian Military Medical Conference, September 1999

INTRODUCTION TO MEDICO-LEGAL INVESTIGATION & SELECTED TOPICS

Presented at CIDC/FBI/AFIP Death Investigation Seminar, Chiemsee, Germany, April 2000

US ARMED FORCES DISASTER MORTUARY AFFAIRS TEAM

(b)(6), Duke J, Roath D et al. Proceedings of the American Academy of Forensic Sciences for Annual Meeting, February 2001; submitted for publication for the Journal of Forensic Sciences, March 2001.

THE IMPORTANCE OF MULTIDISCIPLINARY COORDINATION IN FIELD HOMICIDE INVESTIGATIONS DURING PEACEKEEPING MISSIONS: CASE REPORT OF A U.S. MILITARY HOMICIDE IN KOSOVO

Proceedings of the National Association of Medical Examiners Annual Meeting, March 2001; submitted for publication to the American Journal of Forensic Medicine and Pathology, March 2002

MANAGEMENT OF A MULTI-NATIONAL MASS FATALITY INCIDENT IN KAPRUN, AUSTRIA: A FORENSIC MEDICINE PERSPECTIVE

Labovich (b)(6), Duke J et al. Proceeding of Association of Military Surgeons of the United States, April 2001  
AMSUS Journal - Military Medicine, 2002

Pages 9-20 of AE X Removed under (b)(6)



GENERAL COURT MARTIAL  
UNITED STATES MARINE CORPS  
SIERRA JUDICIAL CIRCUIT

UNITED STATES )  
 )  
v. )  
 )  
G.P. PITTMAN )  
(b)(6) )  
Sergeant )  
U.S. Marine Corps Reserve )

Government Answer to Defense Motion to  
Compel Forensic Pathologist

1. Nature of Answer. The government requests that the military judge deny the defense request to have the government produce Dr. Brian Peterson, M.D.
2. Summary of Facts. The government agrees with the defense recitation of the facts except to modify them as follows:

The government has not received a copy of Dr. Peterson's CV to confirm his expertise.

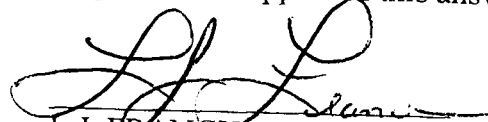
3. Discussion. The government should not have to produce Dr. Peterson because his employment is unnecessary. The defense has characterized LtCol (b)(6) as a government expert. Just because she conducted the autopsy does not make her a government expert. She is available to both sides to discuss the autopsy, theories behind the injuries she observed on the body and the opinions she drew from conducting the autopsy. The defense also had the opportunity at the Art. 32 hearing to discuss these issues with Dr. (b)(6), an experienced forensic pathologist, who was called by one of the accused's at the Art. 32 hearing. Dr. Peterson could not give the defense any more information about the autopsy, theories behind the injuries and causes of the injuries than what LtCol (b)(6) or Dr. (b)(6) testified to at the Art. 32 hearing.

The defense in its motion has hypothesized that Dr. Peterson may be able to provide an alternate theory as to the causes of the injuries observed by LtCol (b)(6) and testified to by Dr. (b)(6). But the defense has provided no evidence that this would be the case. In addition, the defense has not provided any indication that Dr. Peterson would be available and what his fee schedule would be for trial testimony, trial preparation or consultation. If his required fees exceed those authorized by law under the U.S. fee schedule for expert witnesses, then he is by definition unavailable.


If the military judge believes the defense is entitled to a consultant in some capacity, the government requests the opportunity to find an adequate substitute to serve in this capacity from the local, military community.

4. Relief Requested. The government requests that the defense motion to compel the production of Dr. Peterson be denied.
5. Evidence. The government will provide the following evidence for the motion:
  - a. Art. 32 transcribed testimony of LtCol (b)(6)
  - b. Art. 32 transcribed testimony of Dr. (b)(6)
6. Oral Argument. The government does desire oral argument in support of this answer.

25 June 04  
Date

  
L.J. FRANCIS  
Major, USMC  
Trial Counsel

.....  
I certify that on 25 June 2004, I caused a copy of this answer to be served on the defense counsel via electronic mail.

  
L.J. FRANCIS  
Major, USMC  
Trial Counsel

UNITED STATES MARINE CORPS  
GENERAL COURT-MARTIAL  
SIERRA JUDICIAL CIRCUIT

UNITED STATES

v.

GARY P. PITTMAN

(b)(6)

Sergeant

U.S. Marine Corps

MOTION  
FOR APPROPRIATE RELIEF

Compel Discovery

22 June 2004

1. **Nature of the Motion:** Pursuant to Rules For Courts-Martial 701(g)(3)(D), 905(b)(4) and 906(b)(7) the defense moves this court to order the government to order the following discovery requested by the defense be produced. Specifically, the defense requests the court compel the government to produce all discovery requested in paragraph 2.
2. **Summary of Facts:** There have been five discovery requests served on the government by the defense in this case. The defense has requested numerous items that are relevant to the case against Sergeant Pittman. (Enclosures, defense discovery requests). The government has responded to the defense discovery requests. (Enclosure, government responses to defense discovery requests). At this time the defense requires the production of various evidentiary items; some have been previously requested and some are being requested for the first time. For the court's enlightenment, the following background is provided. Private First Class (b)(6) is a reserve Marine who was stationed at Camp Whitehorse with Sergeant Pittman. Private First Class (b)(6) ; testifying against Sergeant Pittman under a grant of immunity and pursuant to a pretrial agreement. The majority of the government's case against Sergeant Pittman rests on the testimony of Private First Class (b)(6) Mr. (b)(6) is a federal felon who was

incarcerated at (b)(6)

(b)(6)

(b)(6)

while

(b)(6) was incarcerated at that location. (b)(6) : allegations form the basis of the evidence that the government seeks to admit under M.R.E. 404(b). Mr. (b)(6) is a (b)(6) who was present at the time of the alleged excessive use of force by Sergeant Pittman at (b)(6). The production of the following discovery is requested at this time:

a. Lance Corporal (b)(6) complete employment record detailing his civilian vocation as a county (b)(6)

b. (b)(6) complete employment record detailing his career as a (b)(6) (b)(6)

c. Records relating to (b)(6) to include: (1) his complete criminal record, to include an NCIC background check; (2) all records detailing the time he has spent in confinement in county, state, and federal confinement facilities; (3) all records detailing (b)(6) (b)(6) status as an U.S. citizen, or any paperwork detailing his applications for U.S. citizenship; (4) transcripts of all court proceedings related to his incarceration at (b)(6) (5) evidence of any criminal misconduct by (b)(6) prior to his entrance to the United States.

d. Private First Class (b)(6) medical records.

### 3. Discussion:

a. R.C.M. 703(a) establishes the standard for discovery in military courts: the prosecution and defense "shall have equal opportunity to obtain witnesses and evidence." See also, U.C.M.J.

Art. 46. To ensure that R.C.M. 703 will have meaning at trial, "[e]ach party shall have adequate opportunity to prepare its case and equal opportunity to interview witnesses and inspect evidence." R.C.M. 701(e). The accused is entitled to inspect both exculpatory and inculpatory evidence. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963); United States v. Kern, 22 M.J. 49, 51 (C.M.A. 1986).

b. Military courts recognize a more direct and generally broader means of discovery by an accused than what is normally available in civilian courts. U.s. v. Dancy, 38 M.J. 1, 5 (C.M.A. 1993); U.S. v. Reece, 25 M.J. 93, 94 (C.M.A. 1987). Regarding discovery, "military law has been preeminent, jealously guaranteeing to the accused the right to be effectively represented by counsel through affording every opportunity to prepare his case by openly disclosing the Government's evidence." U.S. v. Enloe, 15 U.S.C.M.A. 256, 35 C.M.R. 228, 230 (C.M.A. 1965). The only restrictions placed upon liberal defense discovery are that the information requested must be relevant and necessary to the subject of the inquiry, and the request must be reasonable. Reece, 25 M.J. at 95.

The trial counsel has the duty not only to disclose evidence, but also an affirmative duty to search for evidence. See Brady v. Maryland, 373 U.S. 83 (1963) (suppression of evidence favorable to an accused violates due process where the evidence is material either to guilt or punishment). Compliance with the requirements set forth in Brady require more from a prosecutor than remaining unaware of evidence and "chanting 'open file discovery.'" 1999 ARMY LAW. 37, 40, citing Carey v. Duckworth, 738 F.2d 875 (7<sup>th</sup> Cir.1994); U.S. v. Simmons, 38 M.J. 376 (C.M.A. 1993). In fact, the government has the duty to exercise due diligence in reviewing not only the evidence in possession of the trial counsel but also that in the possession, control, or custody of other government authorities, to determine if discoverable information

exists. U.S. v. Williams, 50 M.J. 436, 441 (1999); Simmons, 38 M.J. at 381. This duty to go beyond the evidence in the prosecution's control extends to three types of files: (1) files of law enforcement authorities that have participated in investigations of the subject-matter of the charged offenses; (2) investigative files in a related case maintained by an entity closely aligned with the prosecution; (3) other files, as designated in a defense discovery request, that involve specified types of information within the specified entity. Williams, 50 M.J. at 441.

c. According to the Court of Military Appeals, the Military Rules of Evidence establish "a low threshold of relevance." Id. at 95. Relevant evidence is "any 'evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" Id. at 95, *quoting* M.R.E. 401.

d. Material evidence is that which bears more than "some abstract logical relationship to the issues in the case." U.S. v. Branoff, 34 M.J. 612, 621 (A.F.C.M.R. 1992), *quoting* U.S. v. Ross, 511 F.2d 757, 763 (5th Cir. 1975), *cert. denied*, 423 U.S. 836, 96 S.Ct. 62, 46 L.Ed.2d 54 (1975). Materiality requires "some indication that the pretrial disclosure of the disputed evidence would have enabled the defendant significantly to alter the quantum of proof in his favor." Branoff at 621, *quoting* Ross at 763.


e. The government's failure to disclose evidence that is favorable to a defendant violates the due process rights of that individual if the evidence is material to guilt or punishment. Brady, 373 U.S. at 83, 86. Favorable evidence includes exculpatory evidence and information that might be used to impeach government witnesses. Strickler v. Greene, 119 S.Ct. 1936 (1999); Kyles v. Whitley, 514 U.S. 419 (1995); United States v. Bagley, 473, U.S. 667 (1985); Giglio v. United States, 405 U.S. 150 (1972).


f. The defense submits that the information requested is relevant and necessary, and that under the circumstances the requests are reasonable. The information requested is necessary to allow the defense to properly cross-examine government witnesses and to allow the finder of fact, both for purposes of pre-trial motions and trial, to properly judge the credibility of the government's witnesses.

4. **Relief Requested:** Pursuant to R.C.M. 701(g) (3) (D), the defense respectfully requests the court to order the government to produce the requested discovery.

5. **Evidence:** The defense will present documentary evidence in support of this motion.

6. **Oral Argument:** The defense requests oral argument on this motion.

  
J. TRANBERG  
Civilian Defense Counsel

  
W. A. FOLK  
Detailed Defense Counsel

\*\*\*\*\*

Certificate of Service

I certify that a true copy of this motion was served on opposing counsel on this 22nd day of June, 2004.

  
W. A. FOLK

GENERAL COURT MARTIAL  
UNITED STATES MARINE CORPS  
SIERRA JUDICIAL CIRCUIT

UNITED STATES	)	
	)	
v.	)	Government Answer to Defense Motion to
	)	Compel Discovery
G.P. PITTMAN	)	
(b)(6)	)	
Sergeant	)	
U.S. Marine Corps Reserve	)	

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1. Nature of Answer. The government requests that the military judge deny the defense request for discovery in part as indicated below.

2. Summary of Facts. The government agrees with the defense recitation of the facts except to modify them as follows:

The government's evidence rests more than just on the testimony of Private First Class (b)(6) Sergeant (b)(6) corroborates PFC (b)(6) accounts as to some assaults alleged.

3. Discussion. The government should not be required to produce the following requested information for the defense:

a. Complete Civilian Employment Record of PFC (b)(6) as to his employment as a (b)(6) - This information is confidential and irrelevant for any legitimate purpose. The defense has no information that would suggest that PFC (b)(6) has committed any misconduct in his civilian job and the defense is in essence on a "fishing expedition" trying to find something to discredit PFC (b)(6) without any good faith belief as to the existence of any derogatory information.

b. (b)(6) Complete Employment Record as a (b)(6) - This information is confidential and irrelevant for any legitimate purpose. Once



again the defense is asking the government to conduct a fishing expedition without any good faith belief that this information would be relevant.

c. Records relating to (b)(6) - The government received this request for information for the first time on 22 June 2004 from the defense. The government immediately contacted Mr. Lloyd Boyle, Investigator with the Bureau of Prisons, to obtain information regarding the offenses which led to Mr. (b)(6) incarceration. Mr. Boyle informed the trial counsel that he would look into the request when he returned from vacation on 28 June 2004. The government will produce for the defense the items Mr. Boyle is able to obtain and release to the trial counsel. The information requested as to (b)(6) citizenship and criminal history in other countries is irrelevant for any legitimate purpose for the court-martial.

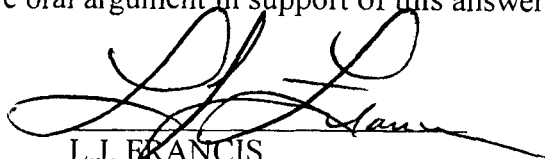
d. PFC (b)(6) Medical Record - There is no legitimate purpose for the defense to have a copy of PFC (b)(6) medical record. It does not relate to any relevant issue that could be raised at the court-martial. Thus, the government should not be required to produce it.

4. Relief Requested. The government requests that the defense motion to compel discovery be denied in part.

5. Evidence. The government will provide no evidence for the motion.


6. Oral Argument. The government does desire oral argument in support of this answer.

25 June 04  
Date

  
L.J. FRANCIS  
Major, USMC  
Trial Counsel

.....

I certify that on 25 June 2004, I caused a copy of this answer to be served on the defense counsel via electronic mail.

  
L.J. FRANCIS  
Major, USMC  
Trial Counsel

Dr. (b)(6) a civilian, was called as a witness by the civilian counsel (Mr. Zimmermann), was sworn, and testified as follows:

*DIRECT EXAMINATION*

*Questions by the government:*

Q. Sir, please state your full name.

A. My name is (b)(6)

Q. Could you spell the last name?

A. (b)(6)

Q. Okay. Sir, could you please tell us the city and state where you currently reside.

A. (b)(6)

*Questions by the civilian counsel (Mr. Zimmermann):*

Q. Doctor (b)(6) would you tell the investigating officer where you are -- excuse me.

IO: I'm just listening intently.

CC (MR. ZIMMERMANN): I thought I heard you say something.

Could you tell the investigating officer where you're licensed to practice medicine.

WIT: I'm licensed to practice medicine in Texas.

Q. And where did you go to school?

A. I went to Louisiana State University and got a medical degree from that institution.

Q. And what year did you graduate?

A. I graduated in 1957.

Q. Were you board certified by the American Board of Pathology?

A. I am.

Q. And how long have you been board certified?

A. About 40 years.

Q. Without going into a great deal of detail, have you had any teaching positions, let's say, in the last 20 years. Don't go back to when --

A. Yes.

Q. And can you tell them what those are?

A. I'm currently on the staff of Baylor College of Medicine. I teach occasionally in the pathology department. I have been an adjunct professor of law in Houston. I'm not currently such a professor.

Q. Let's talk about that. Are you also a licensed attorney?

A. I am.

Q. And when and where were you licensed?

A. I was licensed in Texas in 1969.

Q. And are you currently of counsel to a law firm in Houston?

A. I am.

Q. Can you tell the investigating officer whether or not you've had any military service?

A. I have.

Q. And in what service?

A. Navy.

Q. For how long?

A. I was on two years of active duty at the Naval Academy, and then I was in the reserves for 28 years.

Q. Are you retired?

A. Yes.

Q. At what rank?

A. Captain.

Q. What military medical assignments have you had?

A. I was the chief of the laboratory at the Naval hospital in pathology when I was on active duty. The 28 years I was in the reserve, I had a variety of billets, one was a submarine medical officer, another was a personnel mobilization team, and I've kind of forgotten the rest.

Q. Okay. And what's was your position at the Naval Academy?  
A. I was the Chief of Pathology at the Naval hospital.

Q. Do you have a practice that causes you to continue to practice pathology?  
A. Yes.

Q. Just last year for example, how many autopsies did you perform last year, approximately?  
A. Fifty.

Q. Now, let me ask you: Have you been retained as a consultant by our law firm?  
A. I have.

Q. And this question is going to come up, so let's tell the investigating officer now, are you getting paid for your time and expertise?  
A. I am.

Q. And what rate are you charging?  
A. I'm charging \$150 an hour.

Q. What's your normal rate?  
A. Four hundred.

Q. Why are you charging \$150 instead of \$400?  
A. I was a captain in the Navy. I have money, and it just seemed like the right thing to do.

Q. And is it your understanding that your fee is being paid by Lance Corporal (b)(6) an E-3 in the Marine Corps?  
A. Well, that's a big part of it, yes.

Q. And were you present during the testimony of the government's pathologist, Lieutenant Colonel (b)(6)?  
A. I was.

Q. And have you reviewed the autopsy reports in this case?  
A. I have.

Q. Have you reviewed the autopsy photographs and the NCIS photographs of the body in this case?  
A. I have.

Q. Have you had access to the report so that you know the government's theory of the charges against Lance Corporal (b)(6) and the other Marines?

A. I do.

Q. So you know the government's theory of the alleged homicide?

A. I do.

Q. Let me begin then by asking you to tell the investigating officer whether there's greater difficulty in performing an autopsy on a decomposed body than on what that has been refrigerated since death?

A. There is.

Q. What are some of those difficulties?

A. Well, once the decomposition begins at the time of death, the longer the interval between death and autopsy, the more decomposition there is. Heat is the big enemy, and it's an accelerator of the decomposition processes. Embalming sometimes can be a confusing factor. But I think in this case the time interval and the heat were the two determinants.

Q. Okay. So you would agree that there are just some things we'll never know because the body was so decomposed that the autopsy was unable to determine certain things?

A. That's correct.

Q. Now, among the photographs that you looked at, is there one of a broken hyoid bone in this case?

A. No.

IO: Can you please repeat that question?

CC (MR. ZIMMERMANN): Yes, sir.

Among the photographs that were provided to you that we got from the government of the autopsy photographs, is there a photo of a broken hyoid bone?

WIT: There is not.

Q. Is there -- in the autopsy report, is there documentation of an obstructed airway?

A. No.

Q. Is there photographic evidence of an obstructed airway?  
A. No.

Q. Let me show you a photograph that's been introduced as 65A, I believe, the Investigating Officer Exhibit --

IO: Thirty-three.

CC (MR. ZIMMERMANN): Thirty-three. Mr. Investigating Officer, I'm showing him a duplicate photograph. You should have this photograph.

What is this a photograph of, sir?

WIT: This is the posterior view of a human larynx.

Q. Okay. And this purports to be the one taken in this case by the person identified as (b)(6)

What is -- there appears to be a tweezer or some type of instrument on the right-hand side of this photograph. Do you see that?

A. I do.

Q. What is that?

A. What is the organ the tweezers are --

Q. Is that a set of tweezer?

A. I think. Yes, it's tweezers.

Q. Okay. It's hard to tell but --

A. No. No. It's tweezers. I didn't understand what you were asking me.

Q. Okay. What is the tweezer holding?

A. That's the superior horn of the thyroid cartilage.

Q. Is the hyoid bone in here?

A. No.

Q. Is the airway, that I've asked you about, obstruction, shown in this photograph?

A. To a very limited extent, it is.

Q. Is the entrance to the airway shown in here?

A. Yes.

Q. And can you point out where that is?  
A. Yes, it's at the very top of the photograph. There's an opening that visualizable at the tip of my finger [indicating].

IO: I'm going to need to see that.

CC (MR. ZIMMERMANN): I'm going to put it on this --

IO: Okay. That may take a minute or two to -- it needs to be plugged in first, I believe.

CC (MR. ZIMMERMANN): Mr. Investigating Officer, if I can have the larger one, number 65. You can see more clearly with the actual photograph there. It's number 65.

IO: I believe it's upside down.

CC (MR. ZIMMERMANN): This is actually -- I wanted to do it to start with, sir. Just because it's hard --

All right. Is that -- appear to be the same -- did I leave that picture --

WIT: I have it in my mind.

*Questions by the civilian counsel (Mr. Zimmermann):*

Q. Okay. I want you to have it there too.

I'm showing on the door presenter what you have identified as the tweezers, right here; is that correct?

A. Yes. Why don't we turn it right side up. It's just a small point, but that's --

Q. Part of the problem is that it impacts this thing here?

A. Okay.

Q. All right. This, right here, is the tweezers?

A. Yes.

Q. And even though it's clearer in the photo image that the investigating officer and you both have, what is it holding, right here?

A. It's holding the superior horn of the thyroid cartilage on the right side.



Q. And the entrance way to the airway, you pointed out as being right here. Is that correct?

A. That's correct.

Q. That's just the top of the entrance way to the airway?

A. Yes.

Q. And along here is what, sir?

A. That's the area of the epiglottic fold.

Q. Okay. And does there appear to be any type of abnormality, here, comparing this side to this side?

A. They look reasonably symmetrical to me. Maybe on the right it's a little bit thicker.

Q. And that would be caused by?

A. Well, it could be postmortem. But there is a little bit of a discoloration there, so I think it's reasonable to expect some bleeding at the fracture site and some of that bleeding might have extended into that anatomical area.

Q. Right in here?

A. Yes.

Q. Did the swelling extend into the airway?

A. No.

Q. I'm sorry?

A. No.

Q. Please speak up so that the investigating officer can hear you.

If, hypothetically, there were enough swelling to obstruct the airway so that one could no longer breathe and as a result passed away from being unable to breathe, would you expect to find that swelling to still be there upon autopsy?

A. Absolutely.

Q. Have you ever experienced a situation where swelling during life disappeared after death?

A. Never.

Q. In this area?

A. Never.

- Q. Would you tell the investigating officer what decomposition would do to an airway that was swollen to the point of obstruction during life, what would decomposition after death do to that swelling?
- A. Well, it may do nothing.
- Q. Okay.
- A. Decomposition, particularly in this case, seems to have produced some tissue bloating, gas in the tissues, particularly, and gas would go into this theoretical obstruction and, perhaps, make it even bigger; but it's a guess basically.
- Q. Okay. I don't want, by my questions or your answers, to impute a previous witness's testimony. Are you with me on our purpose here?
- A. Okay.
- Q. But can you tell the investigating officer whether you agree or disagree with the government's witness who said that even though there was swelling, to the point that she believed that to be the cause of asphyxiation, that upon autopsy it was not unusual for her to not find it there? First of all, did you hear her testify to that?
- A. I did.
- Q. In your experience 40-some odd years as a board certified pathologist, do you think that's a possible outcome, that is, that the swelling would subside so that it appeared to be normal upon autopsy?
- A. I do not think that's a plausible outcome.
- Q. Now, we're talking about technical medical things so if I don't ask the question artfully, stop me and I'll try again. But let me ask you this: Can a broken hyoid bone -- can the fact that a hyoid bone is broken by itself be fatal?
- A. No.
- Q. Is it possible that a broken hyoid bone could cause hemorrhaging and a tissue bleed sufficient to cause swelling to obstruct the airway? Is that possible? Not did it happen in this case, but is it possible?
- A. I guess it's possible.
- Q. Did it happen in this case based on the photographs and the autopsy report?
- A. No.

Q. Did you review the autopsy in this case and find a -- first of all, let me back up. When a pathologist finds some abnormality during autopsy, he or she documents it in the autopsy report. Correct?

A. Yes.

Q. Can you tell the investigating officer what that term "documents it" means in this context?

A. I guess it means describing it.

Q. Okay. And if there is no documentation of an abnormality, what is the standard common, clearly understood meaning of that in the field of pathology?

A. No documentation means no abnormality.

Q. Means no abnormality. It means it was normal like you expected it to be?

A. Yes.

Q. Can you tell the investigating officer what you make of the fact that there was a finding -- well, first of all, let me ask you -- was there a finding in this case documented in the autopsy report that the larynx had no abnormality?

A. Yes.

Q. Was there a finding that the trachea had no abnormality?

A. Yes.

Q. What do you make of those two findings when you also have in the autopsy report that the cause of death was strangulation?

A. I make a contradiction.

Q. Can you reconcile it medically in any way? I mean, how do you reconcile those? Aren't they directly opposed to one another?

A. They are.

Q. If you have a normal larynx and trachea, how could you have asphyxiation due to strangulation?

A. It's certainly not in this case. I mean, it's theoretically possible for some compressive force to have been applied, death by strangulation to have occurred, the compressive force to be taken away and totally undetectable, there would be not a permanent anatomical derangement, and death be a strangulation.

- Q. I see.
- A. But that's fanciful. And I don't think it's applicable to this case.
- Q. All right. Let's try to tie it to this case then. The theory of the government's expert witness in this case is that there was compression to the point of a fracture of the hyoid bone, that led to bleeding, that led to swelling, that led to obstruction of the airway over a period of time, that lead to asphyxiation, which lead to death. The cause of that, the triggering event was strangulation.
- Do you think that the finding of larynx and trachea with no abnormality is consistent with that theory?
- A. It is not.
- Q. Is it medically even possible given the scenario that we just talked about as the government's theory?
- A. It's not possible.
- Q. Did you hear the expert witness's testimony with regard to the reason that there was a description of the trachea and the larynx as being normal as a, quote, oversight, unquote?
- A. I recall that.
- Q. What is the standard procedure in the field of pathology before a pathologist signs off on a final autopsy as far as checking for those types of mistakes?
- A. Well, I guess the standard is that those kinds of oversights, mistakes, should be eliminated.
- Q. And what is the purpose of having an autopsy before a final report is released reviewed for quality control or quality assurance by another pathologist?
- A. I guess to eliminate or minimize mistakes.
- Q. Is it to catch such things like this if it really were an oversight?
- A. I suppose that's part of it.
- Q. And if someone were really checking someone else's autopsy report and found that the theory was swelling secondary to a broken hyoid bone that obstructed the airway and yet the finding of no abnormality of the larynx and trachea should have been found if someone were doing his or her job. Correct?

A. That's correct.

Q. The obstruction of the airway is not documented in any way in the autopsy report; is it?

A. Well, not only is it not documented, the opposite is documented.

Q. The swelling is not -- the swelling to the point of obstructing the airway is not documented; is it?

A. That's correct.

Q. The lack of abnormalities in the trachea and larynx are documented. Correct?

A. That's correct.

Q. Given that, it would be the standard and the practice of pathology to rely on the documented lack of abnormalities in that section called "Examination of the Respiratory System." Correct?

A. Right. I mean, that's the very reason for its existence.

Q. Can you tell the investigating officer what normally would produce a broken hyoid bone if a broken hyoid bone exists? Leave aside this case.

A. Typically it's some sort of traumatic event, and they are widely varied.

Q. All right. Does it take a great deal of pressure to break the hyoid bone?

A. It takes pressure. A great deal is kind of a relative term.

Q. Okay. Is the hyoid bone a stationary bone or a mobile bone?

A. No. It's highly mobile.

Q. If I step to the witness stand, can you place your hands on my hyoid bone, gently please?

A. Sure.

Q. Let me turn so the investigating officer can see?

A. The hyoid bone is above the Adam's apple, by about a centimeter or so. I have it right here [indicating]. You see? I'm moving the hyoid bone. And anybody in the room can do the same thing to themselves. It's just not a big deal.

CC (MR. ZIMMERMANN): Okay.

Mr. Investigating Officer, do you have a diagram of the hyoid bone connecting to the larynx in Investigating Officer's Exhibit 39?

TC: Sir, if I could just -- I have that you have 36 IO exhibits. There's been three others. Can I just get the names of those?

IO: I'm sorry?

CC (MR. ZIMMERMANN): He's missing --

IO: Thirty-seven is an e-mail from Captain Ashe. 38 is the NCIS report authored by Special Agent (b)(6). 39 is the diagram that Mr. Zimmermann is referring to; and 40 is an NCIS report authored by Special Agent (b)(6).

*Questions by the civilian counsel (Mr. Zimmermann):*

Q. Is that the orientation you prefer?

A. You insist on turning these people upside down. I can do it both ways, but I think the other way is a little better.

Q. This is better; is that right?

A. I like that better, yeah.

Q. All right. This is a picture of the larynx and hyoid bone looking from the person's face towards the back of their head; is that right?

A. Well, I think technically it's not a picture. It's a drawing of some sort. But it's very accurate anatomically.

Q. Here is the hyoid bone, the little horseshoe shaped hyoid bone, with the front of it would be facing -- and this would be facing us?

A. That's correct.

Q. And this portion down here is the thyroid cartilage?

A. Yes.

Q. And the superior horn of the cartilage that you thought the picture indicated was broken would be back in here [indicating]?

A. Yeah, right there. Stop right there. That's it.

- Q. And no one said this yet, but let's make this clear. When we describe something on the body as the right-hand side or the left-hand side, we're talking about right or left as on the person, like the person's right arm; not as you look at the body, but the person's right arm. Correct?
- A. It's in relation to the corpse.
- Q. In relation to the corpse. Okay. So this would be on the right side of the person where that this would be at?
- A. Yes.
- Q. When we say right side?
- A. Yes.
- Q. Even though it's on the left side as we look at the diagram.
- And this is an area that has tissue or ligaments connecting the hyoid bone to the thyroid cartilage. Correct?
- A. Yeah, we call it a membrane, but that's close enough.
- Q. All right. And what allowed you to put your fingers -- I suppose you put your fingers on each side of the cartilage -- excuse me -- of the hyoid bone when we were doing our demonstration and moved it from side to side; is that correct?
- A. I did.
- Q. What allowed you to move it from side to side without causing me any pain or anything?
- A. The hyoid bone is very mobile. The membrane that I identified is fairly loose and elastic. And the hyoid bone, which is not shown in these pictures, is attached to the jaw and the back of the skull actually by various slender muscles which just allow it to kind of swing up and down and from side to side. There's obviously limited movement. I mean, you can't take it out two feet. But certainly there's significant mobility, which is a protective element.
- Q. Okay. Would the force necessary to break a hyoid bone that's mobile like that have to be applied directly to it?
- A. It would.

- Q. Tell the investigating officer in your experience, and in the clinical experience, what would be an example of a commonly encountered cause of a broken hyoid bone in the research. What kind of things do we see that break hyoid bones?
- A. Hockey pucks, baseball bats, baseballs, fists, crowbars, strangulation attempts or actualities, anything that fixes the hyoid bone making it thereby more vulnerable, and then applying a force of some sort that it can't sustain. It destroys it's integrity.
- Q. Okay. Can grabbing someone by the -- let's say someone was able to put a strap around a person's forehead, hypothetically, tight enough that you could get a grip, and the person was lying there, say, unconscious, so he couldn't help or resist, could a person carefully drag that person, say, 15 or 20 feet and thereby break the hyoid bone?
- A. I don't think so.
- Q. And in other words, can the fact that one is dragged without any pressure on the hyoid bone directly break the hyoid bone?
- A. No.
- Q. All right. You heard the testimony this morning in the hypotheticals by the government lawyer. If a strong healthy, large, over 6 feet over 200 pound, Marine reached down and placed his hand on the throat in the Adam's apple area of (b)(6) and squeezed as hard as he could, or hard -- let me rephrase that -- hard, did that have the capability of breaking the hyoid bone?
- A. It does.
- Q. If -- were you present when the investigating officer asked the government witness the hypothetical about someone putting one hand behind the head and another hand on the chin and carefully, slowly dragging somebody in that manner?
- A. I was present.
- Q. All right. Could that type of dragging break the hyoid bone?
- A. No.
- Q. If let's take the other hypothetical that the government lawyer posed it where part of the hand was underneath the chin, and it would be just the palm or the lower



part of the palm -- the record should reflect that I've got my hand down where it's partially on the chin and partially on the neck where the bottom ridge of my hand is up underneath the chin so that it would match, like what the government lawyer said, would be partly on the chin and partly on the neck -- are you with me?

A. I am.

Q. Would that be able to provide sufficient force of what would -- would that even be able to break the hyoid bone?

A. Well, it's a tougher question than the first one.

Q. Sure.

A. Because the closer one's hand gets to the hyoid bone, the tougher the question gets. But a compressive force has to be applied absolutely to the hyoid bone, the hyoid bone needs to be immobilized by that force making it more vulnerable, and I think the hand position that you described, even though it's closer to the hyoid bone, would not touch the hyoid bone, and, therefore, would not cause the fracture.

Q. Okay. In your medical opinion, could the dragging of (b)(6) for 15 or 20 feet done -- let me back up. You heard also Major (b)(6) testimony, the witness who was an eyewitness to the dragging that testified yesterday morning prior to the expert witness for the government?

A. The big husky major?

Q. That's correct.

A. Okay.

Q. The one that was in uniform. There was another officer but he was in civilian clothes?

A. Okay.

Q. He testified, basically, that he watched -- just so you know what we're talking about -- that he was right there, and he saw Lance Corporal (b)(6) in response to an order from his superior officer grab (b)(6) behind the neck and, in the manner that the investigating officer described yesterday, with his hand under his chin and pulled the man, in his description, carefully and slowly without turning the head from side to side or moving his hand. Using that description, I want to ask you whether in your medical opinion that

dragging in that manner could have caused (b)(6) death?

A. In my opinion, it did not cause his death.

CC (MR. ZIMMERMANN): Let me shift gears to a different subject. And I'm going to approach you and show you this photograph so that you can see it, and I'll bring it back to you if you need to.

Mr. Investigating Officer, these are photographs taken by NCIS, and I haven't seen the blow up, there, to see what number it is. May I please retrieve those? I think it's IO 9.

CC (b)(6) Yes.

IO: Thank you. I know how you like to prolong them.

Q. I showed you, Doctor (b)(6) what is an actual photograph downloaded from a CD that has this paper blow up that's marked 13 of 17 of Investigating Officer's Exhibit 9.

And so that we all know what we're talking about, I want to direct your attention to the -- and that's as close as I can get it -- what appears to be discoloration in the abdominal area. And I'm pointing on the exhibit to this irregularly shaped area right in here [indicating. Are you with me?

A. I am.

Q. What caused that discoloration on the abdomen, sir?

A. That's a postmortem change.

Q. It's a what?

A. Postmortem change.

Q. Postmortem change meaning it occurred after death?

A. Yes.

Q. Part of the decomposition process?

A. Yes.

Q. Is that configuration, this very irregularly shaped area, the pattern of it, is that consistent with the beginning phases of decomposition?

A. Yes.

Q. Is it consistent with being struck in the stomach with a fist?

A. Not particularly. I would say no, quite frankly.

Q. What would you expect to see if an individual is struck in the stomach prior to death with a fist, and then on autopsy, what type of pattern would you expect to see?

A. Ideally -- well, I would say under ideal circumstances, in other words, a well-preserved body, you would expect to see the outline of a fist.

Q. Outline of a fist?

A. At least something resembling a fist, maybe, two or three knuckle imprints, something that looked rectangular, so to speak. And when I say "something," I mean a discoloration of some sort.

Q. Does this discoloration appear to be to you the size of a fist? It goes from side to side and all the way up to the rib cage?

A. Well, not my fist or any Marine's fist that I've seen.

Q. Okay. And it seems to extend up to the rib cage. Is there any significance to that in your arriving at a conclusion that that's a decomposition effect?

A. Yes.

Q. What is that?

A. Well, it's decomposition effects because of gas formed in the intestine. The intestines are confined to the abdomen and, therefore, the discoloration doesn't exist overlying the chest.

Q. Okay. Now, let me turn your attention to a different matter. The autopsy report and the other reports indicate that this individual was 52 years old. So let's assume that that's accurate. What in your medical opinion would be some of the effects on a 52-year-old

(b)(6)

A. Well, there would be pain.

Q. Pain.

A. And significant discomfort.

Q. Discomfort.  
A. There'd be an attempt by the person to limit the excursion of the chest.

Q. Limit the excursion of the chest. What does that mean?  
A. Breathing would be shallow and guarded.

Q. Guarded shallow breathing?  
A. Yes.

Q. Okay.  
A. And the person would probably resist any kind of movement -- would resist movement initiated by themselves because it would hurt.

Q. Would that include getting from a lying position to a standing position?  
A. Yes.

Q. He would resist that?  
A. Yes.

Q. Would he resist moving from a sitting position to a standing position?  
A. Probably.

Q. And that would be because of why?  
A. Well, because the broken ends of the ribs grind on each other with virtually any movement of the trunk, and movement of the trunk is necessary in the normal course of getting up or sitting up.

Q. Okay.  
A. And the grinding creates the pain.

Q. Other than that -- all right. We've got pain, discomfort, not wanting to move, difficulty breathing, shallow breathing. What else?  
A. Yes, I think -- yeah, in a less quantifiable series of events, it would feel bad, would not want to eat probably, not want to drink probably. These are probabilities. I mean, he would feel bad and probably not have much energy and things like that.

- Q. If not treated, over time what could this condition lead to, this shallow breathing, et cetera, the pain?
- A. Well, of course, all of that leads to a general lessening of vital process so to speak. It's very nebulous, but, specifically, it would lead to pneumonia.
- Q. What do you mean, would lead to pneumonia? How would that happen?
- A. Well, when the lungs are not expanded and compressed ideally as is now happening in you and my, secretions accumulate in the less than ideally expanded portions -- well, I should have mentioned that the person with the broken ribs would resist coughing because that hurts, and the resistance to cough and the relative compression of the lungs, so to speak, results in the accumulation of the fluids in those portions of the affected lungs that makes it wonderful for bacteria to start to grow. And that is what pneumonia is, a growth of bacteria in the lungs.
- Q. Let me ask you this: Upon autopsy, would a pathologist fail to determine whether or not pneumonia existed in that body?
- A. Well, an experienced pathologist should get a very, very good idea by a meticulous examination of the lungs with the naked eye.
- Q. The lungs?
- A. Yes.
- Q. Was that done in this case -- by reviewing this autopsy report, did it appear to you that a detailed examination was gone on the lungs?
- A. There was no description of such an examination.
- Q. What was the description regarding the lungs in the autopsy report? Would you like to see it?
- A. I have it. There are no weights given of either lung, which is an objective finding as to what might be in there making it more heavy than normal. There's no description of the external appearance, no description of the internal appearance, no description of any feelings to palpation, in other words, feeling the lungs. The one sentence that seems to be descriptive is, The lungs are of normal shape.
- Q. What does that tell you?
- A. That's what it tells me, they have a normal shape.

Q. Does that help a pathologist to try to determine a cause of death, that they are of normal shape?

A. Not the help I would like to have.

Q. Is, normally, there some type of further incision made to dissect -- and that may not be the right term -- but to cut into the lung to look at the interior of the lung to see what it contained if anything. Is that a normal process?

A. Yes.

Q. Was that done in this case?

A. No. Well, not documented.

Q. It's not documented. So as we said earlier, if it's not documented, it wasn't done. Is that right?

A. That's a reasonable presumption.

Q. Okay. Now, I want to give you a hypothetical. If there were evidence that guards who were in charge of (b)(6) had to assist him in rising and walking from his cell to be interrogated and during that period of time he had very troubled breathing, would that be consistent with what you described, the effects of the broken ribs?

A. It would.

Q. And if you heard further evidence that upon return all he wanted to do was sit or lie in his cell, wouldn't eat, and wouldn't move, couldn't even move to go to the bathroom -- or we say go to the head, or some of these people from NCIS said go to the latrine -- would that be consistent with the broken ribs that you've described?

A. It would.

Q. And if that continued, that is, the troubled breathing, the not eating, the not wanting to move, the not wanting to stand, not wanting to sit, not wanting to talk, the gasping for air, if that all had continued for well over a day to a day and a half before this dragging incident ever occurred with Lance Corporal (b)(6) would that tell you that the broken ribs were the cause of all that and not -- I mean, would that be consistent the broken ribs that you described?

A. It is. Can I have some more water.

Q. Yes.

A. I'm having trouble with my voice.

Q. Do you want me to wait till you get the water?  
A. If I start coughing, probably we should stop. But I think I'm good.

Q. Ready to go?  
A. Sure.

Q. All right. Now, let me add some additional facts and see what -- how this would affect your medical opinion if any, or if it does. At about 40 hours after the ribs were broken, a series of diarrhea incidents began to occur, and the individual has diarrhea, basically, on himself unable to reach any kind of container and then that occurs twice more in the next few hours, you learn that the individual has a history of upper respiratory, or asthma, problems, you learn that the individual has allergies to dust and to dirt between the months of April and September -- and this is occurring in June -- the individual is undergoing the stress of being captured in his own province and contained in a confinement facility, and he's obviously dehydrated and hasn't eaten in two days, what would be the results of the broken ribs and all of these things combined if they went untreated?  
A. Death. And I think we saw it happen. I mean, he died.

Q. In this case?  
A. Yes.

Q. Did he die from a broken hyoid bone?  
A. No.

CC (MR. ZIMMERMANN): May I have a moment with counsel?

Thank you very much, (b)(6)

We pass the witness, Mr. Investigating Officer.

IO: Captain Francis?

CC (MR. ZIMMERMANN): Well, yes. I don't think I introduced the CV which has been provided to the government. That would be Investigating Officer Exhibit --

IO: Forty-one.

CC (MR. ZIMMERMANN): Forty-one.

IO: Any objection to the Doctor's --

TC: No, sir.

IO: IO Exhibit 41 will be admitted and considered.

*CROSS-EXAMINATION*

*Questions by the government:*

Q. Good morning, sir.

A. Good morning.

Q. Now, you would agree with me, sir, that forensic pathologists when they conduct an autopsy they are just supposed to report what they find. Correct?

A. As a minimum.

Q. Okay. And, for example, if -- like in the case of Lieutenant Colonel (b)(6) if she's coming into an autopsy with very little knowledge of any of the facts surrounding the death and all she has is a body and she has to make her conclusions based on just what she finds with the body. Correct, sir?

A. Pretty correct.

IO: I'm sorry. I didn't hear your answer.

WIT: I said pretty correct. In other words, meaning almost correct.

Q. All right, sir. Now, I just want to go through a series of things that she described. You can tell me if you were conducting the autopsy if you would consider these significant enough findings that you would include them in a report. All right, sir?

The contusions that she described in her report as to the backs of the legs, would that be something significant that you would include in a report?

A. I would.

Q. The contusion that she mentioned that was in the lower back region, is that something that you would include in a report?

A. I would.



Q. The broken ribs, as described, is that something you would include?

A. I would include it. I would have passed on a more amplified description.

Q. Okay. If you had noticed a broken hyoid bone, is that something that you would have included in your report?

A. I would.

Q. If you would have noticed a broken superior thyroid cartilage, would that be something you would report in your autopsy report?

A. I would.

Q. Now, going back -- I know, sir, in your testimony you described the stomach discoloration, and you believed that that was a postmortem phenomenon?

A. Correct.

Q. But just for argument sake, sir, let's say it was an antemortem injury, could you have that type of pattern in an antemortem injury if someone had received multiple blows to the stomach and in different types of blows? For example -- I'll break that down even further. If someone had been repeatedly punched in the stomach, had been kneed in the stomach, had been kicked in the stomach, could you have that type of irregular pattern?

A. Probably.

TC: Sir, can I get that photograph? I think it was 65A.

IO: I believe that's it right there -- oh, 65A. Here you go. Sorry.

Q. Now, sir, I don't recall if you said this during Mr. Zimmermann's testimony, but when we spoke in my office just a few minutes ago, you looked at this -- or you had told me that you thought this photograph demonstrated a broken superior thyroid cartilage. Is that correct, sir?

A. Actually it's the superior horn of the thyroid cartilage. It's just a little cartilaginous projection from the main body of the thyroid cartilage.

Q. All right. sir. Now, you did -- correct me if I'm wrong, but in Mr. Zimmermann's testimony you indicated that you did believe you saw some sort of swelling here that could be antemortem?

A. Yes, I did say that.

Q. In your opinion, what kind of swelling are we talking about?

A. I think there's a little bit of swelling around the broken horn, and I think -- and this is a little uncertain -- that there's some swelling extending down the right area epiglottic fold.

Q. All right, sir.

A. And perhaps let me give you a fairer answer. To the extent that it's a little discolored there, I think it's certainly feasible that there has been some hemorrhage.

Q. And you believe that would be antemortem?

A. Yeah, I have no qualm with that.

Q. Okay. One more question for you, sir. I'm sorry. Lieutenant Colonel (b)(6) when she testified, she stated that she believed that this type of, I guess, hemorrhage would be something that would have been recenter [sic] than I guess -- that's not the best way to describe it.

She described, in her opinion, she thought that type of hemorrhage would be consistent with whatever force being cause to break that in 24 hours or less in her expert opinion. But she couldn't say that to a reasonable medical certainty I believe. What would be your opinion on that?

A. My opinion would be that it's very difficult to have an accurate opinion under these circumstances in relation to that specimen. We have a body that's been decomposing for 100 hours. We do have this fracture. We make these determinations based on color because the blood, if that's what it is, changes color over time. These color changes, though, are typically described in fresh bodies. So the color changes in a decomposing body really produces a new set of variables. I think it's consistent with 24 hours; I think it's consistent with 48 hours. There's no way to be more honestly precise in my opinion.

Q. All right, sir. Do you think -- would you agree that would -- a break like that would cause pain to an individual?

A. I think it would be painful.

Q. Sir, if you combined that with a broken hyoid bone, would you think that would increase the pain for the individual?

A. Probably.

Q. Do you think that those two types of breaks would make it very difficult for an individual -- well, would make it difficult for an individual to talk normally?

A. I don't see a direct connection. We talk and make sounds with our vocal cords which are described as being normal. The vocal cords are an integral part of the larynx. So if the larynx is normal, the vocal cords are normal. It's hard to say. It might make it more difficult to talk. I don't see a direct connection.

Q. Well, what kind of individual -- if they had two breaks like that in their neck, what kind of symptoms would you see typically?

A. I think the break in the hyoid bone is more likely to produce a swallowing problem. I don't think it's likely to produce a breathing problem just because of the fracture. I don't know what symptoms the broken superior horn of the thyroid cartilage would cause. It might be functionally silent. In other words, it might have no functional effect. I think it would be painful and maybe there would be some guarding because swallowing would move that area. Breathing would probably move that area a little bit. So I think there might be some reluctance to talk because intrinsic to talking is breathing. But I think it's just a grain of sand against the broken ribs.

Q. Yes, sir. I understand. Thank you.

Sir, now, you described that -- sir, can I get that one diagram of the hyoid bone, larynx?

IO: IO Exhibit 39.

TC: Thank you.

Sir, I'm showing you IO exhibit -- IO Exhibit 29 and, sir, looking at what you described earlier as the hyoid

bone and then the under portion that you described as the thyroid cartilage, what is that darkened portion in between there?

WIT: That's the hyo-thyroid membrane.

Q. Membrane.

A. Yes.

IO: Excuse me. On the diagram it refers to them as ligaments. Same, same?

WIT: Well, not really. There is a technical difference.

IO: So the diagram is in error?

WIT: I wouldn't agree with the diagram, yeah. No. I think that's -- I think if you look at anatomy books, it's called a membrane. But it's almost a semantic issue.

TC: Thank you, sir.

Now, in an arid climate if a body has been decomposing for a series of days, up to four days, would you expect some of the membranes to dry?

WIT: Yeah, that's reasonable.

Q. Like, for example I think you were sitting in the back, sir, when we put the photograph up of the eyes, showing the picture of the eyes for the petichiae?

A. Yes.

Q. And did the eyes appear dry to you?

A. Well, I can't say that I looked at the picture that carefully, but you would expect the eyes to look dry in this scenario. So --

Q. And there are membranes in the eyes that could indicate dryness?

A. That's true.

Q. So is it possible, sir, that that membrane between the hyoid bone and the thyroid cartilage that it could have -- with an injury to both the hyoid bone and to the superior thyroid cartilage could have swollen that membrane?

A. Swollen the membrane? Yeah, that's possible.

Q. And, sir, is it possible that if that membrane was swollen that due to an arid climate and four days of decomposition, that that membrane then could have shrunk?

A. I think that is extremely farfetched. That membrane is not exposed to the air. It's covered on every surface by other tissues. And I don't just see that as being reasonable or expected or even probable.

Q. All right. Sir, but is it possible?

A. I would not consider it to be possible enough to be considerable. I don't think it's possible. That's make it's clear.

Q. Is there a distinction between swelling you would expect to see in muscles and ligaments vice swelling you might expect to see in a membrane?

A. Well, swelling is a vital process. I mean, swelling, except for decomposition, is something that the body does to itself, so muscles swell, membranes swell, pretty much in the same basic mechanisms. I'm not sure I understand your question, nor am I answering it properly, I imagine.

Q. Yes, sir. I'm probably not being articulate here. Because we had talked about -- I guess, in Mr. Zimmermann's, questioning he talked about -- and please correct me if I'm wrong here, sir, if I'm mischaracterizing --

IO: I don't think you need to worry about that.

TC: All right, sir.

If a muscle, for example, like, broken ribs or the contusions in the legs, there's a certain amount of swelling that would occur while a person is -- that is expected when a person is alive. Correct, sir, with that type of injury?

WIT: Yes, that's correct.

Q. And if that -- it's the amount of that swelling or the amount of reaction, I guess, with the tissue that allows a pathologist to determine whether it's an antemortem injury vice postmortem. Would you agree with that?

A. Yes.

- Q. All right, sir. So is there a difference in how swelling would be -- again, this is just your opinion, sir -- in how swelling could be maintained in a membrane that's subject to drying out vice a muscle?
- A. Could you repeat that for me?
- Q. Yes, sir. Is there a some sort of distinction between the swelling that you could see that was an antemortem injury in a muscle vice what you could see in an antemortem injury that was a membrane?
- A. I don't think there'd be a fundamental difference in the mechanism. I think the swelling in either situation would be discernible or not to the naked eye and to palpation.
- Q. Would you agree that they are different types of tissue though?
- A. Sure.
- Q. Sir, I want to shift gears on you a little bit and talk about -- in your opinion based on the different things that Mr. Zimmermann had discussed, different types of injuries that (b)(6) may have suffered which in your opinion you believed could be treatable, sir. I believe you already testified that you thought there was a combination of factors that led to (b)(6) death. Correct?
- A. Correct.
- Q. So you thought the broken ribs was a factor?
- A. Yes.
- Q. And you thought he possibly could have gotten pneumonia. Correct, sir?
- A. Correct.
- Q. And, sir, you believed that -- certainly you don't believe it's the cause of death, but certainly a broken superior thyroid bone and a broken hyoid bone could be factors as well, as far as in the aggregate?
- A. They could.
- Q. And as far as his deterioration over time, certainly the contusions on his legs and on his body aren't helping things. Would you agree?
- A. Sure.

Q. And the diarrhea certainly isn't helping his condition?  
A. That's correct.

Q. And the fact that he's not drinking very much water or eating very much food isn't helping either?  
A. Correct.

Q. Sir, is pneumonia a treatable sickness, illness?  
A. It is. If you don't mind --

Q. Yes, sir.  
A. It's not an inevitably curable disease, but it's always treatable.

Q. Okay. So I guess what I mean by treatable --

IO: Excuse me. It's not inevitably curable. Meaning that you could still die from pneumonia even with treatment.

WIT: Right.

Q. But receiving the proper, you could live though.  
Correct, sir?  
A. It increases the chances.

Q. All right, sir. (b)(6) as have been described for (b)(6) those by themselves, those are -- someone could be treated for those and live. Correct?  
A. Correct.

Q. Someone could be treated for multiple contusions to their legs and back, possibly, stomach and still live?  
A. There isn't much of a specific treat for those, but there are some symptomatic treatments, and it would help. And they could live.

Q. Dehydration, that's treatable?  
A. It is.

Q. A broken hyoid bone, if it was broken in such a way that it would cause -- I guess, mechanism causing that break was an instantaneous death or death soon thereafter, if death occurred hours later, that's a potentially treatable condition?  
A. It is.

Q. A broken superior thyroid cartilage, again, taken into the scenario that it's not happening instantaneously or

a few seconds thereafter from cutting off the oxygen level, if death occurred hours later, that's a treatable condition. Correct?

A. Yeah, I don't know of any treatment for it. It is a very minor thing. Treatment would probably be directed toward making a person more comfortable and, of course, being aware of the fact that they have to breathe properly and eat and drink and so on and so forth.

Q. All right, sir. And if (b)(6) had some sort of intestinal infection that was causing his diarrhea, that's medically treatable as well?

A. It is.

Q. Thank you, sir. Just one second.

Let me give you one more hypothetical, sir. This whole laundry list of things I just described, from pneumonia, chest infection, broken ribs, contusion, hyoid bone break, superior thyroid cartilage break. and dehydration, that laundry list, if (b)(6) had all of those things at 1700 on the 5th of June and he didn't die until midnight or the very beginning of the 6th of June, 7 hours later --

A. 2400.

Q. Well, no. What I'm going is seven hours in the forward, sir. So I guess it would be 00 --

A. I was just trying to show my knowledge of military terminology.

Q. All right. Roughly seven hours later --

A. Yes.

Q. If he had all of those things at 1700 and he dies at midnight, if he gets prompt medical attention at that time, is there a possibility that he could have lived?

A. Yes.

TC: Thank you.

IO: I have some questions for you, Doctor.

WIT: Yes, sir.

IO: Well, I'm sorry.

Mr. Higgins, did you have any cross-examination?



CC (MR. HIGGINS): No, sir.

IO: Lieutenant Folk?

DC (1STLT FOLK): Yes, sir. I can wait until your questions are over.

IO: No. Go ahead.

*CROSS-EXAMINATION*

*Questions by the defense counsel (1stLt Folk):*

Q. Sir, you served 30 years in the Navy?

A. Yes.

Q. So you're familiar with a Naval Corpsman. Right?

A. I'm sorry?

Q. You're familiar with what a Naval Corpsman is, what their role is?

A. Sure. Sure.

Q. And the responsibilities within the Navy and Marine Corps community?

A. Command structure.

Q. You're familiar with the kind of training they receive?

A. I am.

Q. And you're familiar as well with their level of expertise in diagnosing medical problems. Right?

A. I am.

Q. Would you in your 30 years of experience in the Navy believe that most Corpsman would be able to diagnose somebody with a broken hyoid bone?

A. I would think not.

Q. How about the superior thyroid cartilage? Do you think most Corpsmen would be able to diagnose that as being broken?

A. No chance.

- Q. How about broken ribs? Would most Corpsmen be able to diagnose that as a problem?
- A. Well, I would hope so. It's a significant detriment to good health.
- Q. Would you have to be able to speak the same language with the person with broken ribs to diagnose it, or is something a corpsman just based on their experience and palpating that individual that they'd be able to figure out?
- A. I think they could figure it out. I don't know how high their burden is or what their standard or diagnostic how high their acumen really is. I mean, I think perhaps really good ones could.
- Q. Okay. But it wouldn't surprise you if perhaps the corpsman missed broken ribs?
- A. It would not.
- Q. Okay. And how about if -- do you think those Corpsmen are trained to be able to recognize the kind of bacterial infections in somebody that would lead to diarrhea like (b)(6) suffered.
- A. I don't think so. I think they could recognize diarrhea, certainly, but not the causative agent, nor could a physician as far as that's concerned. You need laboratory support.
- Q. In your experience as a board certified doctor, are there more than -- are there numerous ways that diarrhea can be caused?
- A. Yes.
- Q. Let me turn your attention briefly to these (b)(6). You said that they would cause main in (b)(6) or in anybody for that matter who was suffering from broken ribs. Right?
- A. I did.
- Q. Would you expect somebody who had broken ribs to sleep on their side, on the side of their body that had broken ribs?
- A. I'm trying to think of what I did when I had broken ribs. I think probably lying on the back is the most painless way to do it.

- Q. So you would agree that laying on your side if you had broken ribs on the other side of your body would probably aggravate the sensation of pain?
- A. It's certainly a reasonable position; yes, I would think that's a possibility.
- Q. Raising your arms over your head would actually hurt if you had broken ribs too; wouldn't it?
- A. I think so.
- Q. Okay. If somebody with broken ribs is having those ribs aggravated in some manner, whether it be touched or their arms are being raised up and down or the body is being moved around, you would expect some kind of verbal reaction to that pain normally; wouldn't you?
- A. I would.
- DC (1STLT FOLK): I don't have any other questions, Doctor. Thank you.
- IO: Okay. Doctor, I have some questions.

EXAMINATION BY THE INVESTIGATING OFFICER

Questions by the investigating officer:

- Q. What is the treatment for pneumonia, standard course of treatment for pneumonia?
- A. Antibiotics is the essential element of the treatment. Drugs --
- Q. Taken orally or injection or --
- A. Either way. Typically we use injections these days and frequently intravenous antibiotics. It delivers the medicine more quickly and more uniformly. And then there's supportive measures that would be taken, you know, measures to abate fever, measures to assure that hydration was adequate, measures to ensure that bronchial passages were open, various dilators of the bronchial -- antibiotics are the absolute essential.
- Q. Just so I understand the testimony, did I understand you correctly when you said the broken hyoid bone was not the cause of death?
- A. That's right.

- Q. Is this a true statement or not? A broken hyoid bone could be an indicator that someone was strangled.
- A. That's true.
- Q. And the strangulation could have cause the death?
- A. If there was a strangulation.
- Q. Assuming there was?
- A. Yes.
- Q. Someone put their hands or some other mechanism around a person's throat sufficient to break the hyoid bone and cut off the passage of air that ultimately led to death. And the result of that was to break the bone, the bone would be one of many indications that the person was strangled?
- A. That's true.
- Q. So the strangulation causes the death, not the broken hyoid bone?
- A. That's right.
- Q. That exhibit that you were shown is a photograph. I don't know if it's still up there or not. It was IO Exhibit number 9, photograph number 13 -- no, not that one. The one with the photograph of (b)(6) lying supine on the gurney or on the deck showing the discoloration to the abdomen.
- Yes, that's the one. Now, so I understand, you had indicated that you believed that was a postmortem discoloration associated with the beginning stages of decomposition, as I understood your testimony. Am I correct in that?
- A. Yes, sir.
- Q. Okay. Lividity, as I understand it, is the pulling or the collection of blood after a person dies and, basically, gravity will pull it downward. Is that correct?
- A. Yes, sir, that's correct.
- Q. Okay. That's not what that is. That's not the pulling of blood downward caused by gravity, lividity. It's not lividity?
- A. No, sir, it isn't.

- Q. If someone was laying down on their back, as (b)(6) appears to be in this photograph, most of the lividity you would see would be on his backside? In other words the back of the arm -- anything where gravity would work forcing the blood downward?
- A. That's true with one caveat if you don't mind. After a certain amount of hours the lividity becomes fixed, as we say. It's not going to move after that assuming the body is flipped around. It's the variable period of time we normally say 6 to 12 hours, perhaps, 12 hours as the lividity gets fixed. But if he's kept on his back the whole time, as it seems to me he perhaps was, then the lividity is going to be on his back, stay on his back, and not any place else.
- Q. So after, say, 6 to 8 hours if he happened to be flipped over on to his stomach, that blood would then eventually course it's way down to his front side?
- A. That's our rule of thumb.
- Q. Okay. You had indicated with respect to that discoloration which is irregularly shaped and, essentially, around his belly button area was not due to being -- to being punched there because there was no outline of a fist or knuckles or anything like that?
- A. I did.
- Q. Let me relate to you an experience that I had that came to mind as you were talking about that. Last year before hunting season I took my 30 odd six out to sight in my scope again. And I didn't have it seated properly in my shoulder, and I got one heck of a bruise, not only where I had the rifle resting but all the way down the right side of my chest and the whole way down my arm. I mean, it really did a number on me. It didn't hurt, but it just did a number of me. And even though the impact was right up here, the bruising occurred everywhere.
- How did that happen and relate it to what I'm seeing there? If a person gets punched, am I only going to see the bruise where the punch is? And, of course, I didn't see that with this 30 odd six incident.
- A. I could just describe what's typical.
- Q. Right.
- A. Your situation does sound extreme. You must have burst a major blood vessel or certainly an artery which perhaps was not quite big enough to have a name and yet

carried a lot of blood. Now why you didn't have a delineated mark where the butt of the rifle was, I don't know. I don't have an explanation of that. That would be the expectation.

If there's massive out pouring of blood, sometimes that can be obscured by the involvement of the surrounding tissues. Now, to me, and I'm voicing an opinion, that's typical for postmortem color change. I don't see in it, as you didn't see on your shoulder, any specific pattern of an injurious instrument, fist, baton or whatnot.

Now, Captain Francis asked me if that could be a collection of blows. I think optically, that's possible. Nobody has yet touched again on the nonfinding during the autopsy of any bleeding into that area, which I think is significant and it plays into my opinion.

Q. Okay. Thank you.

Typically -- this may sound like a very stupid question, but how do ribs break or crack? What would cause that to happen?

A. It is almost always some traumatic event which compresses the bony portion of the chest cage; and it can be a variety of forces, an automobile accident, hitting the steering wheel is fairly classical, a really heavy blow to that area, industrial accident, you know, where people get hit with moving equipment, can produce that. I had a case where a man was crushed by a locomotive. He had rib fractures much more extensive than this, but that's another way to get them. It's some distortive application of force.

Q. Being punched in the ribs?

A. I don't think I personally have ever seen cracked or broken ribs just from a punch, one punch. I think that's a little farfetched, but a very, very forceful kick, I think, you know, like a karate kind of kick, or hitting with a instrument that creates some momentum, like a baseball bat or something like that, policemen's baton. And I'm just kind of brainstorming.

Q. Sure. Okay.

I think you said right at the outset in response to some of Mr. Zimmermann's questions to establish your

background, you had performed approximately 100 autopsies within the last year?

A. No, sir. I've done 50.

Q. Fifty in the last year?

A. 50,5-0 in calendar year '03. I've done three so far this year. And there's one waiting for me in Houston to do when I get back.

Q. All right. How many would you say you've done over the course of your professional career?

A. I would say 2000 as a minimum, give or take a hundred.

Q. Okay. Now, Captain Francis had asked you some questions relative to Lieutenant Colonel (b)(6) lack of having an NCIS report or something like that or any other information to go by before she got started with her autopsy. Do you typically have that sort of information, some sort of history as to how the body got to you before you performed your autopsy that you would read so that you have some idea going in what might have been the cause of death or what you may look for?

A. Depending on the circumstances, I -- we typically get kind of a hodgepodge of information. Sometimes it's from a family member who has an ax to grind, sometimes we have a hospital chart to read, sometimes we get virtually no information. Information can be tricky. Inevitably there's some possibility of a bias being introduced.

I like to approach an autopsy, no matter what I've gotten from collateral sources, with an open mind, like a blank black-board. I think that gives me a better shot at finding what is there and not reading into the findings something that somebody else expects to be there. Do you follow me?

Q. I do follow you. And that leads me to a follow-up question. Would it be better to go into an autopsy cold without any idea of what happened so that you don't have any preconceived notions even lingering in the back of your mind that may steer you in one direction or another and, therefore, you overlook something that may be important. So would it be better just to go in with that blind slate?

A. That's the logical out growth of what I said. But I do think it's better to have information. But the ideal, of course, is to have information --

Q. And then forget about it?

A. Yeah. I mean, that sounds contradict -- but not be overwhelmed by the information that you've gathered.

Q. And I would take it that over the course of your career, you've done 2000 or so autopsy reports?

A. Yes, sir.

Q. Now, in this particular autopsy report that Lieutenant Colonel (b)(6) signed, there was at least one portion of it where she had admitted that there was an oversight with respect to the condition of the larynx and --

A. -- trachea.

Q. The trachea. She indicated they were normal when, in fact, they were not normal in her view, and she testified to that, and you heard that.

A. I did.

Q. When an autopsy report indicates -- let me rephrase that. If an autopsy report fails to mention something, the implication is that that particular area or bone or tissue or muscle or organ or whatever is then normal?

A. That's correct.

Q. That's the implication?

A. It is.

Q. And in this case it was pointed out that there were some indications that things were normal because there was no mention of it?

A. Yes.

Q. On the report.

Now, would you agree with the proposition that simply because something may have been left out of a report that was noticed during an autopsy that was, in fact, abnormal and so testified to in a court of law like we are right now, that -- this is not coming out right. Let me try to rephrase this so it's understandable even to me.

The lack of documentation, therefore, the implication means it's normal, doesn't necessarily mean that it is normal. It just simply could be a mistake?

A. It could.



Q. So what we have is more lack of attention to the report, itself, the report making, as opposed to the autopsy?  
A. That's possible.

Q. Okay. And I would -- I'm just taking a wild guess here and I don't mean to impute you, but I'm guessing that you may have made a mistake or two in an autopsy report that you have done over the last 2000?  
A. I have.

Q. Okay.  
A. Hopefully.

Q. A few.  
A. Hopefully a few and some unrecognized, but that's certainly true. I might make one comment here, sir, if you'll allow me.

Q. Go ahead. Sure.  
A. Yes, in an autopsy report there might be the omission of a finding, slip of the tongue, typo, who knows what. But I think it's the absolute standard that if you're going to make a diagnosis as to the cause of death, in your autopsy you better have the appropriate findings. That is almost an unforgivable mistake. I mean, fine, let's say (b)(6) had kidney surgery ten years ago and the file just describes two kidneys, and, in fact, there's only one, well, that doesn't make a lot of difference. But if you're going to put the cause of death down as strangulation, you'd better describe the findings, have them in the report that substantiate and buttress and document that diagnosis.

Q. Okay. That seems to make sense to me.  
A. I like it.

Q. I figured you would.

I think those are the only questions I have.

WIT: Thank you.

CC (MR. ZIMMERMANN): Briefly. May I proceed, sir?

IO: Sure.

REDIRECT EXAMINATION

Questions by the civilian counsel (Mr. Zimmermann):

Q. Let's follow up that -- the investigating officer was making inquiry where there's a mistake because something was left out even though the findings would have found some abnormality -- are you with me on that?

A. I am.

Q. And you agree that that would be a mistake. You pointed out, however, if it gets to the critical area of supporting your cause of death determination, then that's a mistake that's unforgivable.

Let me switch to the other kind of mistake, not the kind Colonel Gallo was just talking about where you see an abnormality, but you just failed to document it. Let me invite your attention, the investigating officer and counsel, to the autopsy report itself which is Investigating Officer Number 30.

IO: Thirty.

Q. Thirty, on page 3 where we have a description of the respiratory system.

And this is the internal examination of the respiratory system and it says the larynx, trachea, and bronchi showed no abnormalities. Are you with me?

A. I am.

Q. And this is not a situation here -- and by the way, just to complete -- that's been claimed to be an oversight error. That is not the type of error that Colonel Gallo is asking you about where it's just a failure to document something that really should have been documented. Here there's actual documentation of it being no abnormality. Am I right?

A. You are.

Q. That's a big difference.

A. It is.

Q. Between those two situations. Okay.

I mean, one is an affirmative assertion that there are no abnormalities, and the other one is just a failure to mention. Two completely different things?

A. Correct.

Q. Now, just a couple of follow-ups. You were questioned about both on direct -- on cross and by the investigating officer about this discoloration in the abdominal area.

IO: For the record that's IO 9, number 13.

CC (MR. ZIMMERMANN): Yes, sir.

Now, would you agree, as I think Lieutenant Colonel (b)(6) did, is that the typical Y-incision would go right through this umbilicus area. Right?

WIT: Yes.

Q. In other words, it would cut in that discoloration area. Correct?

A. Correct.

Q. And if you were doing the autopsy and you suspected that that was a contusion, that is, a bruise, you would check for subcutaneous bleeding or hemorrhaging. Right?

A. I would.

Q. And you'd document it. Right?

A. I would.

Q. And she did do that when she cut open other portions of the body that appeared to be contusions, on the back, on the legs, on the thighs. Am I right?

A. You're right.

Q. Was there any documentation in the autopsy report of subcutaneous hemorrhaging in the abdominal area?

A. No.

Q. One thing that I failed to do is have you explain to the investigating officer what caused that discoloration other than just decomposition. And I think that led to the questions about lividity. That's not lividity?

A. No.

Q. What causes that discoloration?

A. This is due to the formation of gas inside the intestine postmortem which generates some pigmentary change as we see it.

Q. And I apologize because that's, I think, what caused the confusion. That comes from gases?

A. Yes.

Q. Lividity comes from the pooling of blood?

A. Right.

Q. This is not lividity?

A. No.

Q. And it's not necessary to show a photo, but here is -- I don't know if this is in evidence.

CC (b)(6) It is. It's a part of IO -- NCIS photos -- 9.

Q. I don't know that we need to clutter the record any more, but I think the investigating officer asked you about lividity on the back, on the backs of the legs, wherever the body was in contact with a surface, and then the gravity drew the blood down. Correct?

A. Yes.

Q. All right. You had a number of questions asked of you by counsel for the government dealing with the membrane between the hyoid bone and the thyroid cartilage. Now, regardless that -- what's the effect of that on the airway in this case?

A. What's the "that" are we talking?

Q. Any possible swelling. The question is dealing with swelling of the membrane between the hyoid bone and the thyroid cartilage.

A. I don't see how any feasible degree of swelling in that membrane would constrict, obstruct, or block the airway.

Q. And let's go over this again to make sure we're clear. If there had been swelling sufficient to obstruct the airway so much that the person died of asphyxiation, you would expect to see that swelling still present on autopsy?

A. I would.

- Q. With regard to the issue about trying to date the injury on that photograph, is it fair to say that the bottom line was after your discussion is that it could be 24 hours, but it could be 48 hours?
- A. Yes.
- Q. Is that the bottom line?
- A. Well, that's what I said, but I think it could be even longer or maybe a little shorter. The bottom line really is that it's very difficult to tell.
- Q. You just can't tell?
- A. You can tell to some extent. If it's not bright red, you know that a few hours have passed. But beyond that in a decomposed body like this, it becomes very conjectural I think.
- Q. Now, you were asked a question about breaking -- how the superior horn of the thyroid cartilage would be broken. I think actually you were asked whether the superior thyroid cartilage was broken. I believe your actual testimony was that it was the superior horn of the thyroid cartilage that's broken on the right side. Correct?
- A. Correct.
- Q. And that's significant. The thyroid cartilage itself was not broken?
- A. That's right.
- Q. Just the little tip, there, that had the tweezer on it which is the horn?
- A. Let's just get super technical here for accuracy. The thyroid cartilage's main body is composed with two lamella. We call that the lamella. They meet in the middle. That's the real structural component of the larynx. That's not touched. It's not fractured; it's not crushed. It not's in any way distorted. What we have here is just this little cartilaginous protuberance, like, a teeny-weeny peninsula that's broken from its base.
- Q. My question deals with this: That is below the hyoid bone?
- A. Yes.

Q. So that means to break that, the pressure had to be applied even lower on the neck than the hyoid bone?  
A. That's right.

Q. Which would have to mean that someone put their hands on that area, it was down even lower than where you demonstrated the hyoid bone is on me and the way those diagrams showed that?  
A. That's correct.

Q. So that would make it even less likely that if someone's hand slipped from the chin and barely engaged the very top of the neck that it would break that bone, or break that cartilage?  
A. Yeah.

Q. The superior horn?  
A. I like that better, yes.

Q. The superior horn?  
A. Yes.

CC (MR. ZIMMERMANN): All right. No further questions. Thank you.

IO: Mr. Higgins?

CC (MR. HIGGINS): No, sir.

IO: Lieutenant Folk?

DC (1STLT FOLK): No, sir.

IO: Captain Francis, any recross?

TC: No, sir.

IO: Any need for the doctor to remain in the area subject to being recalled?

CC (MR. ZIMMERMANN): We're prepared to excuse Doctor (b)(6) sir.

IO: Doctor (b)(6) you're excused from this proceeding, and you can resume your normal business. I'd just caution you not to discuss your testimony with anyone other than the attorneys in this case of the attorneys for any related investigation and to be very conscious with

The Article 32 investigation was called to order at 0758,  
30 January 2004.

(b)(6) Staff Sergeant, was called as a witness by the  
prosecution, was sworn, and testified as follows:

*DIRECT EXAMINATION*

*Questions by the government:*

Q. Please have a seat. Please state your full name,  
spelling your last name?

A. (b)(6)

Q. Currently, you're a Staff Sergeant in the United States  
Marine Corps?

A. Yes.

Q. What unit please?

A. I'm in 2d Intelligence Battalion, 2d CI/HU Company,  
Counter Intelligence Human Intelligence Company.

Q. Okay.

IO: I'm sorry, say that again.

WIT: It's 2d CI/HU Company, sir.

IO: Okay.

*Questions by the government:*

Q. Are you an active duty Marine?

A. Yes, sir.

Q. Staff Sergeant, did you participate in Operation Iraqi  
Freedom?

A. Yes, sir.

Q. Were you in Iraq on June 3, 2003?

A. Yes, sir.

IO: Staff Sergeant, I'm going to have to ask you to speak up  
just a little bit. Just make sure - these microphones  
don't amplify, they just record, so we need for you to  
speak up.

WIT: Yes, sir.

Questions by the government:

- Q. Were you involved in a patrol that ended in the capture of a (b)(6)?
- A. Yes, sir.
- Q. Please describe how that came about?
- A. The actual capture, sir?
- Q. Correct. I guess what led to the capture. What information you had that led to it, then the actual capture.
- A. I can't actually get into the information that led to it, sir.
- Q. Okay.
- A. As I spoke to you before --
- Q. Okay.
- A. But when we did have the information to go get him, we had Weapons Company, 2/25 Marines go with us to actually capture him. And we had to wait to go get to the house. We got to the house, got out, and we got him. That's pretty much what I can say.
- Q. Okay. Is he suspected of being related to anything? Anything significant?
- A. He is related to be a part of an ambush that occurred on the army soldiers in Nasariyah.
- Q. Is that the 507th Maintenance Battalion?
- A. Yes, sir.
- Q. What linked him to that?
- A. There was information that was received from somebody that we spoke with that stated this. That's how we got the information.
- Q. Okay. Was there any evidence seized along with (b)(6)?
- A. Yes, sir.
- Q. What was that?
- A. An M16A2.



Q. Belonging to whom?  
A. A 507th soldier. I'm not sure who.

Q. Okay. Um, were there any other individuals besides (b)(6) that were captured?  
A. At the first sight, no, sir. At the second sight there were brothers that were turned there.

Q. Were they also linked to this weapon?  
A. Yes, sir.

Q. Now, during the time of the capture of (b)(6) did you observe any type of overly aggressive handling of him?  
A. No, sir. At the first - at his house actually, where we captured him. I stay at the vehicle whenever Weapons Company went forward with Sergeant (b)(6) and when he came back, he was fine.

Q. What do you mean by "fine"?  
A. Nothing was wrong with him. The questions I asked - he was having a rough time breathing, I've been asked before or suiting a lot. It's Iraq, it's a hundred degrees, everybody's suiting. He looked fine to me. He got back in the HMMWV, and we went to the second house.

Q. Okay. At the time of the capture of (b)(6), he looked healthy to you?  
A. Yes, sir.

Q. Um, at what point during June 3rd was the last time you -- that you estimated that you saw (b)(6)?  
A. Roughly, 1800, 1830.

Q. Okay. And what was the circumstances surrounding the last time you would have saw him?  
A. The last time we were escorted by Weapons Company 2/25, we were going back to see our OIC, and Weapons Company was taking him to Camp Whitehorse, and we split. They went their way, we went ours, and that was it.

Q. Okay. That last occasion, how did (b)(6) appear to you physically?  
A. Physically, fine. He's mentally a little scared because he knew that we had caught him.

Q. But he was still healthy?  
A. Yes, sir.

Q. Okay. Following the 18 - around 1800, 1830 on 3 June,  
A. when was the next time you saw (b)(6)  
At 0800 or 0830 the next morning, sir.

Q. The next morning?  
A. Yes, sir.

Q. Why would you be seeing him that morning?  
A. Because we were going to interview him to get more information on how he got the rifle or what other links he might have.

Q. Okay. During that interview, do you recall who was present?  
A. (b)(6) myself, Sergeant (b)(6), and we called him Lance Corporal (b)(6). I can't pronounce - (b)(6), I think is how you said his name.

Q. Now, where did this interview take place?  
A. It was Camp Whitehorse. They have the holding facility. It was a building off to the side that we used for interviews.

Q. Okay. Right in the detention facility?  
A. Yes, sir.

Q. Um, do you remember who brought (b)(6) to you?  
A. I don't know, sir. I don't remember that.

Q. Okay. All right. During the interview, how did (b)(6) appear?  
A. Once again, he looked fine to me. He had a kind of an arrogance about him that he didn't want to speak to us, but that was the only thing I noticed.

Q. Was he - did he at any time actually speak words to you?  
A. He did.

Q. Did it appear that he was having any difficulty speaking?  
A. No, sir.

Q. Did it appear that he was having any discomfort or swelling around the neck area?  
A. No, sir. Not at all.

Q. Now, during the time that (b)(6) was captured, was it - was information passed to the Weapons Company of why the significance of capturing (b)(6)?

A. There was - their OIC to - their S-2, S-3 guy, it was cleared for us to go get him, so I guess it was, sir.

Q. Okay. Now, after your interrogation of (b)(6) was there any word passed to any of the guards regarding - well, let me back up for a minute. Um, what purpose of conducting these investigations is determined as the status the individual might have or, for example, if they were a potential EPW or if they were a criminal or if they were just at the wrong place at the wrong time?

A. It's a process to see if they have further information to help us out, yes, sir.

Q. Okay. Now, following the interrogation of (b)(6) was there anything passed to the guards?

IO: Responsibilities upon the command to train our people to do the job they are supposed to do when they are in a war zone, and likely to encounter an enemy, and to take an enemy into custody as prisoners of war. Has the command met that responsibility in this case, I don't know. I haven't heard all the evidence so I don't know, but that's something that's looming large in my mind with respect to the dereliction of duty charge. And so your objection is noted with respect to this particular exhibit, IO-5, the FM3452. I think it is relevant with understanding what responsibilities not only may lie with the Marines, but also, with the command. And so - I don't know if that helps you at all or not, but I'm going to allow, I'm going to consider it.

Questions by the government:

Q. Just one last question for you, staff sergeant, are you aware of any person that worked for you that told any guard to have the guards at the Whitehorse Detention Facility perform this 50/10 technique?

A. No, sir.

TC: That's all I have.

IO: I'm sorry. Hold on for a second, captain. If you could - I had a question for the captain. You asked the question, was Staff Sergeant (b)(6) aware of any guard or any HET member -

TC: Any member of his team, sir.

IO: Okay. Thank you.

CROSS-EXAMINATION

Questions by the military defense counsel (Capt Jasper):

Q. Good morning, sir.

A. Good morning.

Q. Your testimony is that you never heard of the 50/10 being employed by any member of the Human Exploitation Team. Correct?

A. Yes, sir.

Q. How much interaction did you have with Staff Sergeant (b)(6) at Camp Whitehorse?

A. First time was probably May 12th. I came back to Nasariyah May 9th from the north, and probably May 12th when I was getting a tour of the area.

Q. Okay. And after that, you would visit Camp Whitehorse probably three times a week?

A. Probably three to four times a week, sir.

Q. Who did you interact with primarily during - regarding the guard force at Camp Whitehorse?

A. Mainly whoever was on duty. I would see a lot of Sergeant Pittman, the Staff Sergeant (b)(6) I can't pronounce his last name --

Q. (b)(6)

A. Yes.

Q. Did you frequently talk with Staff Sergeant (b)(6) about how things were running?

A. Every so often, sir.

Q. Did you ever give him any guidance on how to prep any of your teams before you talked to them?  
A. How to prep them?

Q. How you want - any advise whatsoever about what you wanted Staff Sergeant (b)(6) to do in order to prepare them for interviews with you?  
A. We would talk to the guards that were going to bring them.

Q. What would you tell them?  
A. Whenever they'd come.

Q. What kind of guidance did you provide them?  
A. We went to the room - which room we were going to use, and we would have them bring them in there to us in the amount of time that we needed before they were to be brought to us. If it was the first person we spoke to, we'd ask them to keep their bag on to bring them into us.

Q. So you asked them to keep the bag on their heads?  
A. From the EPW facility over to the other building.

Q. Would you provide any other details about how you wanted them to come over to you and what condition you wanted them to come over to you?  
A. No, sir.

Q. You didn't discuss with them that they should be fed well, or not fed at all? Provided water? Anything about any details?  
A. They were supposed to provide food and water to the EPW's, sir. That's not my responsibility.

Q. How much time would you allow to transpire before you ultimately interviewed these guys?  
A. From the time I spoke to the guard, whoever was on duty, probably five to ten minutes, and we would have water with us to give to them.

Q. Have you ever had to use any force to compel any information from any of the detainees?  
A. No, sir. Before I met these guys in Task Force Terror. No actual war was going on. One of the -- he was an EPW at the time, but one of the Iraqis was injured and had to hold one of them down so he wouldn't run away. That's about it.

Q. At Camp Whitehorse, did you encounter any problems with detainees?  
A. No, sir.

Q. What were the condition of the detainees at Camp Whitehorse before you saw them, generally speaking?  
A. The condition of the -- they were kept in one room inside the concertina wire, and honestly, they were kept -- well, as far as I've seen by the 2/25 Marines.

Q. So 2/25, in your opinion, was doing a good job keeping these guys in good condition because when you saw them, they seemed to be very healthy?  
A. Yes, sir.

Q. Bar none, no exceptions?  
A. The only time I seen something happen at Whitehorse was never -- an individual was brought from the jail out in town, and a razor blade was in his mouth.

Q. Okay. We'll get into that razor blade in a moment, but besides that, every person that you've met was over the course of about a month, three times a week, was in fine condition when you talked to them?  
A. Up until this, yes, sir.

Q. Okay. Now, with regard to the razor blade incident, tell the investigating officer what you know about that?  
A. Um, we were leaving the compound, sir, the U.S. Army had brought a bus of probably 15 people, if I can remember correctly, the corpsman had the first Iraqi man strip down. I was walking out and heard that somebody yelled that he had a razor blade in his mouth. I heard, like, a tussle, and I turned around and the Iraqi man was on the ground and Sergeant Pittman and Lance Corporal (b)(6) had him down trying to get the razor blade out of his mouth.

Q. All right.  
A. And that was it.

Q. And in your opinion, they used the appropriate force to get the razor blade out because he could have harmed them?  
A. Yes. He could harm them.

Q. Major Paulus wasn't present during this situation, was he?

A. I remember seeing Major (b)(6) and Major Paulus both there.

Q. While they were taking the razor blade out of this person's mouth?

A. Yes, sir.

Q. All right. What did you report when you saw to anybody?

A. We went back and told our OIC, but with both those majors there, I'm just a staff sergeant, they are higher ranking than me.

Q. Okay --

A. And there was nothing wrong that was happening according to me.

Q. They weren't abusing him?

A. No, they were not.

Q. Just using force to get the razor blade out of the EPW's mouth?

A. Right.

Q. And --

A. And whenever I see it --

Q. That was the only time you saw any type of physical contact with the EPW's and the guards?

A. Yes. That was it.

Q. With respect to (b)(6) you said he was speaking normal to you, normal, but there were times that he was uncooperative with you even, weren't there?

A. Right.

Q. And you stayed with him for about 90 minutes?

A. Yes.

Q. And you said, physically, he seemed to be all right, but you said -- what did you say about him mentally?

A. He had a -- it was kind of like he had a chip on his shoulder where he didn't want to speak to us.

Q. Is he a hard man to figure out?  
A. He was until he -- he started talking once he knew that he probably wasn't going to see his family for a long time for what had happened.

Q. It was kind of hard to understand what his desires were? You say he -- was it difficult for you to really get a feel for what he wanted?  
A. We knew what he wanted. He wanted us out of his country. Honestly.

Q. How was his English?  
A. We spoke through an interpreter.

Q. Entirely?  
A. Yes, sir.

Q. So he didn't speak any English whatsoever?  
A. No, sir.

Q. Not even pleasentries, like, "no", "yes"?  
A. No, sir.

Q. Overall, the Marines at 2/25 were running a very professional facility?  
A. Yes, sir.

Q. Was it well supervised?  
A. Yes, it was.

Q. No problems whatsoever?  
A. I never ran into any problems there.

Q. When you heard that (b)(6) had passed away, was it pretty shocking to you?  
A. It was, and we didn't know any of the circumstances until we arrived in Kuwait.

Q. And you felt no desire from your team, being the HET Team to convey any information to the guard force on how to prepare these EPW's?  
A. We talked to them. We'd tell them if it was the first time we were speaking to them, we'd keep their bag on. That way, they wouldn't see us in case they get released and we're out in town, and they see that and something happens to us. That's one reason we would keep them bagged. We would ask them before they came over if they had spoken to anybody else, if they had been fed, if



they had been given water. And like I said before, sir, we would bring water with us to give them while we're speaking to them. That's all part of the process of talking to them. You give them the water, they start trusting a little bit more. But we would ask the guards before, we would ask if any had been seen by a corpsman. We would ask the individual when we go in there if they had been seen by a corpsman to make sure everything was okay.

Q. And you saw four men present at this facility?  
A. Yes. Two or three different ones.

Q. And they seemed to be attending to the EPWs or detainees?  
A. Yes, sir.

Q. How many detainees in the course of your business at Camp Whitehorse approximately did you interview?  
A. I would say anywhere from 30 to 40, sir.

Q. So you didn't interview every detainee there, just the selected ones. Right?  
A. Yes, sir.

Q. Okay. And the 30 to 40 detainees that you interviewed, did any of them ever complain to you how they were being treated?  
A. No, sir.

Q. Not one?  
A. Not one.

DC (CAPT JASPER): Thank you. I have no further questions. Thank you.

IO: Lieutenant Folk, or Mr. Zimmermann.

CC (MR. ZIMMERMANN): Captain Studenka is going to do it.

#### CROSS-EXAMINATION

Questions by the defense [Capt Studenka]:

Q. Good morning, staff sergeant?  
A. Morning, sir.

Q. I just want to pinpoint the time frame of that interview, this was the morning after the capture?  
A. Yes, sir.

Q. You say 0800 to 0900?  
A. From 0800 -- the whole time, sir, or when we started?

Q. When you started and when you finished?  
A. Probably 0800 to 0930, sir. It's a hour to a hour and a half.

Q. And before the interview began, you didn't actually see how (b)(6) was delivered. Right?  
A. I did not, sir.

Q. So he came to you essentially?  
A. (b)(6)

Q. Right.  
A. We went in and spoke to the guards. I don't remember who it was. But Sergeant (b)(6) let me speak to him, he's the one that actually went in and spoke to the guards, and he came over to that room.

Q. But you guys were already in the room when he --  
A. I was.

Q. -- was delivered to you?  
A. Yes.

Q. All right. So you didn't see how he was transported from the holding facility to where the interview actually took place?  
A. No, sir.

Q. You didn't see him travel to come see you?  
A. No, sir.

Q. And during this interview, he sat the entire time?  
A. Yes, sir.

Q. He wasn't standing during the interview, was he?  
A. No, sir.

Q. I think you already said he was sweating during the course of that interview?  
A. Like his forehead, sir. Everybody was sweating but --

Q. Okay. But included in that --  
A. Yes.

Q. And you already kind of described that it appeared that he was afraid of the situation? He was afraid of you, at least?  
A. Not really -- he was worried.

Q. Worried?  
A. Yes.

Q. Okay. Seemed somewhat irritable to you?  
A. Yes.

Q. Did you notice if he was favoring any side, particularly as he sat?  
A. Whenever he was sitting down -- the room that we used -- we used an old shower for the Army -- Iraqi Army, and he was sitting in front of a -- kind of a separator.

Q. A separator?  
A. It's a -- how would you say, separator stall. Concrete --

Q. Partition?  
A. Yes.

Q. Okay.  
A. And he had his flexycuffs on, and he was leaning against like this --

Q. The witness has just leaned to the right side. Does that accurately describe how he was leaning as well?  
A. Yes.

Q. And that was throughout the course of this interview?  
A. He would switch back and forth.

Q. Favoring his side one way or the other?  
A. It wasn't -- he was leaning over. He would sit up straight and he was leaning the other way.

Q. You described to me, at least earlier, that it seemed to you he had a bad back. Correct?  
A. I described.

Q. Prior conversation? Fair enough. It seemed that he -- at times he was switching, leaning to his side, to another side, back and forth?

A. Yes.

Q. He didn't say anything during the course of the interview?

A. He did not, sir.

Q. And he did at one point request to drink water?

A. We asked him, and he drank water.

Q. Can you describe a little bit about the chip on his shoulder, and maybe some of this hostility towards Americans. In the course of getting this water, he actually wouldn't taken from you or Sergeant (b)(6) Correct?

A. No, sir.

Q. He would only take that water through the translator?

A. Yes, sir.

Q. And the amount of water was a little less than a cup full?

A. Yeah. It practically filled his mouth, and that was it. He did that twice.

Q. And during the course of this interview, he wouldn't answer certain questions?

A. Right.

Q. And there was no physical contact with (b)(6) during this course of hour-an-a-half interview?

A. No, sir.

Q. And you didn't see him actually deliver back to the holding pen.

A. We walked behind as he was being delivered back to the compound. There was nothing wrong. We got into our Hmwwv and --

Q. And left?

A. Yes.

Q. Okay. Thank you.

DC:

CC (CAPT STUDENKA): Thank you.

IO: Lieutenant Folk?

DC: Yes, sir.

CROSS-EXAMINATION

Questions by the military defense counsel (1stLt Folk):

Q. Captain Studenka went over some of the observations you made of (b)(6) physical condition during this interview, did anything that you observed from (b)(6) leave you to believe that he was suffering from any kind of medical condition?

A. No, sir.

Q. Anything that you observed from (b)(6) basically, that he was suffering from any kind of physical impairment at all?

A. No, sir, not at all.

Q. Now, I want you to run me through this -- your procedure while you were conducting these interviews, did you say they were all -- that all these detainees that you interviewed were given some kind of medical examination prior to your conducting this interview?

A. Whenever we go there, we ask that the guard that's on duty, if he's been seen by a corpsman, if anything was found. We also ask the individual when they go in --

Q. That's one of the questions that you as an interrogator asks?

A. Yes, sir.

Q. Okay.

A. When they are brought there, there is a corpsman that is at the facility. If they are seen by a corpsman that is up to whoever runs that facility. It's not my job, but we ask when we go there.

Q. Did you recall whether that question was opposed to (b)(6) do you want to see a corpsman?

A. Do you want -- we asked him if he had seen a corpsman.

Q. Okay.

A. And, yes, he had.

Q. Did he indicate ha he needed to see a corpsman or to get any medical attention?  
A. No, sir.

Q. And this was all done in his native language, through an interpreter?  
A. Through an interpreter.

Q. Did he appear to understand the questions that were being asked?  
A. Yes.

Q. Now, you talked about -- this 50/10 rule, you had never heard of it prior to these NCIS agents?  
A. Right.

Q. In your experience of a member of this particular team, an intelligence team, would you agree or disagree that sleep deprivation is completely forbidden for people before interviews of HET Teams?  
A. Sleep deprivation?

Q. Yeah?  
A. Now, they would be asked to keep them awake.

Q. So that wouldn't be inappropriate?  
A. No.

Q. Okay. And in fact, sleep deprivation would be expected by people that are going to conduct interviews. Right? Of the detainees?  
A. It's according to who they were, yes.

Q. And that's done so that it facilitates your ability to get useful information. Right?  
A. It keeps the shock of capture.

Q. And the shock of capture is one of the things that you can rely on to get that helpful information?  
A. Yes.

Q. So sleep deprivation in and of itself, is something you would expect as a member of the HET Team?  
A. If we wanted it, we would ask the guards actually to keep them awake.

Q. So for some detainees that would be something you want, and for others it would maybe not be?

A. Yes.

Q. And again, if you don't know the answer to this, of course you can't tell me, but (b)(6) was a relatively high detainee in the camp, as far as his potential for intelligence?

A. For what we captured with him, he was.

Q. And so he would be a detainee that you probably would want the shock of capture to be still fresh in his head when you got a chance to talk to him. Right?

A. We would, yes.

Q. And could you give me an understanding of what kind of training you've received as a member of one of these Human Exploitation Teams, just the length of training and what schools you've attended?

A. We go through a 14-week course, in the NITC, it's the Navy/Marine Corps Intelligence Training Center, four to six weeks interrogation training. We had the opportunity to go to longer schools. I have not -- actually I was supposed to graduate yesterday from SER school, but I'm here. But --

Q. Okay. Standard training for somebody in your position would be 20 weeks of school approximately?

A. Maybe longer, sir.

Q. And all of that schooling is to teach you how to appropriately prep detainees and extract information from them?

A. Yes, sir.

Q. If you had seen prisoners or detainees being mistreated, that would be a concern to you as somebody who's in an intelligence extraction capacity. Right?

A. Yes, sir.

Q. And the reason that would be a concern to you is because somebody being mistreated is probably going to be less likely to give you good information. Right?

A. That, and it's wrong.

Q. Correct. And had you seen it, you would have done something to put a stop to this as a staff sergeant. Right?

A. Yes, sir.

Q. When you say --

IO: I'm sorry. Lieutenant Folk, I missed your question before that about the mistreatment. Can you repeat that again. I'm sorry.

DC: I believe the question, sir, was, "If he had seen prisoners being mistreated, that would have been a concern to him from someone in an intelligence extraction billet, and as a staff NCO of Marines.

*Questions by the military defense counsel (1stLt Folk):*

Q. Do -- was it your practice to find out if they spoke English or was that something that wasn't even touched?

A. It's part of our process. We ask him -- you can ask a few questions to find out for sure because they lie and say they don't speak English. But there's certain things that you can do to ask, and if they don't respond, then you know that they don't and you go through an interpreter.

Q. And was that procedure employed regarding (b)(6)?

A. We knew from whenever we were at his house that he didn't speak English.

Q. Was that -- okay. And finally, your team, your Human Intelligence Extraction Team, you never provided any of the guards with specific instructions on how to treat prisoners in preparation for theater. Right? Other than telling them that this person might not -- this person -- the sleep deprivation?

A. If we wanted to have sleep deprivation, we would ask to keep them up for an hour or keep them up for a while. To bring them in, if we wanted them to keep the bag on their heads so they wouldn't see our vehicle like I stated before, if we wanted to keep them flexycuffed because they are such a bad guy, and we don't want to be harmed, and in return, we don't want to harm them, we would do that.

DC (1STLT FOLK): All right. Staff sergeant, I don't have any other questions.



WIT: Thank you, sir.

IO: I've got some questions.

EXAMINATION BY THE INVESTIGATING OFFICER

Questions by the Investigating Officer:

Q. Did you ever see any -- I'm going to call them EPW's, for lack of a better term. And I think that includes anybody who was held at that detention facility as a prisoner, whether they were enemy prisoners of war, common criminals, or detainees. Okay?

A. Yes, sir.

Q. Did you ever see any EPW's being mistreated by any guard as at Camp Whitehorse during the times that you've gone there to conduct interviews?

A. No, sir.

Q. What would be your definition of mistreatment?

A. Mistreatment?

Q. Yeah. What would be something that you -- if you saw it, you'd say that's wrong, and I've got to do something about it?

A. Beating, kicking, slapping them, pushing them, not feeding them, sir.

Q. And you never saw any of that?

A. No, sir.

Q. Okay. Neither of the FM3452 that was shown to you earlier by Captain Francis, you're familiar with that document?

A. Yes, sir.

Q. And that document prohibits torture of any kind?

A. Right.

Q. And the treatment of EPW's in order to obtain information from them -- or at any time really. Correct?

A. Yes, sir.

Q. Now, you had made a statement earlier here today that this 50/10 procedure, standing for 50 minutes, sitting

for ten, for hours at a time would be wrong because it would be in violation of the Geneva Convention.

A. Yes, sir.

Q. Tell me why you think it's wrong to have an EPW to simply stand and sit, stand and sit, stand and sit?

A. Why it's wrong?

Q. Right?

A. The training we received, that is known as a stress position, and we're not allowed to do it.

Q. What position?

A. Stress.

Q. Stress position?

A. Yes, sir.

Q. Okay.

A. Because they are supposed to be allowed to do certain things. Be comfortable while they are here or in this facility. Standing like that or being picked on is wrong because if they are older gentlemen, 60 years old etc., that can cause harm to their lungs and the concertina wire is there, so some of them may fall in it, but me personally, with all the training I received --

Q. All right. Now, did the FM3452 -- there is a paragraph that defines what may be torture, and one of the examples that is provided, it describes prolonged sitting, standing or kneeling. Do you recall that particular provision?

A. Yes, sir.

Q. But it adds the phrase in about normal unusual positions. Prolonged sitting in an about normal position. Similar to what we may have seen with respect to some of the prisoners in Vietnam, like, Senator McKane. You see some of those pictures where he would be tied up -- or his hands tied behind his back, and having logs or -- you know what I'm talking about. Positions that would perhaps cause extreme pain.

Q. But do you see the 50/10 procedure similarly, standing and sitting, as simply one of those position that may cause pain?

A. Honestly, sir, like I said, this older persons, it would cause pain. Especially over there where their medical facilities aren't very up to, you know, they are not up to our standards.

Q. All right. Now, whenever (b)(6) was captured initially on the 3rd of June, you were present?

A. Yes, sir.

Q. Did you -- were you one of the ones that came into his residence?

A. No, sir. Sergeant (b)(6) went with Weapons Company, I think it was a platoon. To his house. I actually stayed back with our company --

Q. How far back were you?

A. Fifty to a hundred feet, sir.

Q. Could you see the entry team go into the residence?

A. I could see a couple individuals around the house, but it was kind of blocked off by trees, and they were in front of the house from where I was.

Q. How long was the entry team out of your view before they re-emerged with (b)(6) in custody?

A. Probably 15 to 20 minutes, sir.

Q. During that 15 to 20 minutes, you were unable to see what was happening inside the residence?

A. No, sir. I couldn't see.

Q. When (b)(6) was brought out of the house and back to your area, I presume. Right?

A. Yes, sir.

Q. Then transported back to Camp Whitehorse?

A. We went to the --

Q. You went in your one direction, but they all came back to the same area, let's say, then, 2/25 ranked weapons company took them to Whitehorse, and you went off to do your own thing?

A. From whenever we captured him, sir?

Q. Right?  
A. We went to another area, sir.

Q. I don't really care where you went, but you went one way and they went another way back to Whitehorse, with  
A. (b)(6) Right.

Q. When (b)(6) came out of the house, did he appear to be roughed up, bloodied up, hurt in any way?  
A. No, sir.

Q. And when he got back to where you were located with your vehicle, how close would you say you got to him?  
A. I was sitting in the back of the HMMWV. I was sitting here. He was probably right there.

Q. Within a couple of feet of you?  
A. Yes, sir.

Q. So you were able to see him pretty well?  
A. Yes, sir.

Q. What time of day was it?  
A. It was -- it's the even time probably, 1750 whenever we had him back at the HMMWV.

Q. Enough light out?  
A. Yes, sir.

Q. And he didn't appear to you to be hurting in any way from the capture, other than maybe mentally, wondering what was going on. But physically, he didn't appear to be suffering in any way?  
A. He seemed fine, sir. I was speaking to him because we were going from his house to another residence, and I was speaking to him asking certain questions we needed before we got there.

Q. That's right. From (b)(6) residence, you went over to where the two brothers were?  
A. Yes, sir.

Q. And was he the one that directed you to that location?  
A. Yes, sir, he was.

Q. How far a ride was that?  
A. Anywhere from one to two miles, sir.

Q. A very short distance?  
A. It was a short distance, but it took time because the roads were -- for a HMMWV, the roads were real narrow, and it took a while to get there.

Q. And you were within that entire time in the vehicle?  
A. In the back of the HMMWV with Lance Corporal (b)(6)

Q. (b)(6) -- was there a translator or interpreter there?  
A. Yes --

Q. And through the interpreter, through the lance corporal, did (b)(6), you know, voice any problems that he may have been experiencing? Maybe medically, physically, or otherwise that required some attention or you thought required some attention?  
A. He did not.

Q. And then after the capture of the brothers a couple of miles away, that's when you all split up, and you went to do another mission? And the Marines took -- when 2/25 took (b)(6) and the two brothers back to Camp Whitehorse?  
A. We went back to see our OIC, and they took him to Whitehorse.

Q. So you split up at that point?  
A. Yes.

Q. And you didn't see (b)(6) until the next day?  
A. Yes.

Q. And the next day appeared to be roughly the same physical, medical condition that you saw him that previous evening?  
A. Yes.

Q. No different than appeared to be -- did you see any marks, bruises on his face?  
A. No, sir, I did not.

Q. What was he wearing?  
A. His destasha. It's a like a white gown that the men over there wear.

Q. All right?  
A. And that's it, sir.

Q. And what part of his body -- of his head is exposed when they are wearing that gown?  
A. Um, it cuts down on their neck, sir. Their legs and a little bit of an arm.

Q. Did you notice anything unusual about any part of his body that you could physically see?  
A. No, sir.

Q. Any marks, bruises, cuts, anything like that?  
A. I did not.

IO: I believe those are all the questions I have.  
Captain Francis, do you care to do any redirect?

TC: Yes, sir.

*REDIRECT EXAMINATION*

Questions by the government:

Q. I just want to clear up this one issue. Um, Staff Sergeant (b)(6) did either you or any of your team during the interview with (b)(6) kick, hit, punch, or choke (b)(6) in any way?  
A. No, sir. Nobody laid a finger on him during the interview process. The only person that I know actually touched him at all was Sergeant (b)(6) when he brought him back to the vehicle when he was captured.

TC: All right. Thank you. That's all I have.

IO: Any recross?

[END OF PAGE]

DC (CAPT JASPER): Yes, sir.

RECROSS-EXAMINATION

Questions by the military defense counsel (Capt Jasper):

Q. Just one question for you staff sergeant, would you agree that having someone stand for 50 minutes followed by the sitting for ten minutes would basically -- would require them to stay up, it would keep them awake?

A. It would keep them awake, sir.

DC (CAPT JASPER): Thank you.

TC: Sir, can I have one follow up question to that?

IO: Let me go through other counsel, see if there's any other --

DC (1STLT FOLK): Yes, sir.

RECROSS-EXAMINATION

Questions by the military defense counsel (1stLt Folk):

Q. Staff Sergeant, you said certain detainees, one's where you wanted this shock of capture to be a little bit more fresh in their heads, you had asked that have them sleep deprived. Did you ever give any guidance on how to accomplish that or was it just basically keep them up?

A. You ask the question, sir, if we wanted intelligence from certain individuals that we would ask this -- me, personally, in Iraq, for Iraqi Freedom and seven months spent there, I never asked anybody to stay awake.

Q. Okay. Based on your time at Camp Whitehorse, you said some of these people, you asked to have them kept up?

A. Um-hmm.

Q. Do you know if any specific guidance was given as to the Camp Whitehorse Marines to accomplish that?

A. I don't know. Like I said, I never asked anybody to stay awake.

Q. Finally, you said you arrived at Camp Whitehorse on 9 May?

A. I arrived in Nasariyah on 9 May.

Q. Okay. Now, when would you have started at Camp Whitehorse?

A. Probably the 12th.

Q. Was there a pre-existing kind of SOP in existence when you checked in on the 12th of May then?

A. I'm not sure, sir.

Q. Okay.

A. The 15th MEU was there prior to us -- or prior to the actual team, HET 16, that was in An-Numania. It came down because task force terror was leaving to join this team.

DC (1STLT FOLK): Thanks, Staff Sergeant.

IO: Captain Francis?

TC: He asked my question.

IO: I have a couple of follow-ups now. I'm sorry.

EXAMINATION BY THE INVESTIGATING OFFICER

Questions by the Investigating Officer:

Q. Staff Sergeant (b)(6) the many times that you would go to Camp Whitehorse to conduct interviews or interrogations of prisoners, did you ever go into the holding buildings that were there where prisoners were kept before they were brought to the building where you were conducting the interview?

A. Yes, sir.

Q. Did you do that on every occasion when you went to do an interview?

A. Not every occasion, sir. If they had certain articles that were tagged, we would look at what they had.

Q. The personal possessions of the EPW's?

A. Yes, sir.



Q. So those would be kept at the detention -- holding building?

A. They were right in with the individuals, but they were kept in -- I think they had them on a rack or rack frame where they kept some of the stuff.

Q. On three occasions, when you went to the holding building, did you see EPW's standing?

A. Standing --

Q. Did they appear to be standing not on their own, but being standing because they were told to stand?

A. I never seen anybody told to stand. I seen them standing and moving --

Q. Moving around?

A. Or going to the restroom that was in the actual building.

Q. Did you ever see any EPW's basically -- for lack of the a better word, standing at attention or standing at ease or just standing because it looked like that was what they were supposed to be doing?

A. I never saw that.

IO: Okay. I have no other questions. Any in light of the ones I just asked.

TC: No, sir.

DC (CAPT JASPER): No, sir.

CC (CAPT STUDENKA): No, sir.

DC (1STLT FOLK): No, sir.

IO: All right. Any need to have staff Sergeant (b)(6) available for recall?

TC: No, sir.

DC (CAPT JASPER): No, sir.

CC (CAPT STUDENKA): No, sir.

DC (1STLT FOLK): No, sir.

IO: Okay. Staff Sergeant, you are free to go -- and are you going be able to graduate from SERE school or is that --

WIT: It's -- that was the staff academy, sir, but I finished that and I was supposed to go to SERE school, but --

IO: Because of this, you didn't go?

WIT: No, sir.

TC: Sir, it's being captive in sort, provide a letter for him and maybe he'll get the credit.

WIT: I'm going back in a couple of weeks.

IO: All right. All right. Well, you're excused. You're free to go about your duties. I would just ask you not to discuss your testimony with anyone other than the attorneys involved in this case, or any other attorney that may question you that's representing any other Marines that may be related to the investigation to this.

Also, there is media interest in this case, I don't know if you knew that or aware of that, but it's been reported. Someone from the media, they may try to contact you. I can't tell you not to talk to them, but it would probably be best that you not do that. If you do, be very cautious about what you say to them. Don't say anything that you wouldn't want repeated in an open court. I know that you and another Marine may have been concerned about your identity, but rest assure that your identity will not be published in the newspapers or on the T.V. or anything like that. Okay?

WIT: Yes, sir.

IO: Thank you. You're excused.

*The witness withdrew from the courtroom.*

IO: Captain Francis, would you like to call your next witness?



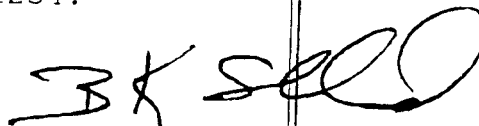
UNITED STATES MARINE CORPS  
2D INTELLIGENCE BATTALION  
II MARINE EXPEDITIONARY FORCE  
PSC BOX 20139  
CAMP LEJEUNE, NORTH CAROLINA 28542-0139

IN REPLY REFER TO:  
5800  
Leg/S-1

From: Legal Officer, 2d Intelligence Battalion  
To: Military Judge

Subj: UNAVAILABILITY OF STAFF SERGEANT (b)(6)  
(b)(6) FOR GENERAL COURT-MARTIAL ICO MAJOR C. A.  
PAULUS AND SERGEANT G. P. PITTMAN

1. Due to operational commitments SSgt (b)(6) will not be available for the General Court-Martial cases of Major Paulus and Sergeant Pittman.
2. 2d Intelligence Battalion will be deploying in July 2004 in support of Operation Iraqi Freedom II. The Battalion will be going on block leave during June 2004. SNM will be available for the Motions hearing on 28 and 29 June 2004.
3. Point of contact at this unit is Major Smallwood, Battalion Executive Officer at DSN 751-2254.

  
B. K. SMALLWOOD

APPELLATE EXHIBIT XVI

PAGE 1 OF 1

AE XVII pgs 1-8 Removed under (b)(6)

The Article 32 investigation was called to order at 0800,  
2 February 2004.

Lance Corporal (b)(6) U.S. Marine Corps, was called as a witness by  
the prosecution, was sworn, and testified as follows:

*DIRECT EXAMINATION*

*Questions by the government:*

- Q. Please state your full name.  
A. (b)(6)
- Q. You are currently a lance corporal in the  
United States Marine Corps Reserve. Correct?  
A. Yes, sir.
- Q. You are currently on active duty?  
A. Yes, sir.
- Q. What's your current unit?  
A. My current unit?
- Q. Correct.  
A. H and S Company, 1st Marine Division.
- Q. Now, you participated in Operation Iraqi Freedom?  
A. Yes, sir.
- Q. At that time you belonged to 2d Battalion, 25th Marines?  
A. Yes, sir.
- Q. Um, when did you get involved in  
Operation Iraqi freedom? When did you get called up for  
that?  
A. It was the end of March of 2002.
- Q. Okay. Now, during your work-ups, did you travel with  
the 2/25 at Camp Lejeune?  
A. Yes, sir.
- Q. And here at Camp Lejeune, do you recall going to any  
type of EPW training conducted by Major Paulus?  
A. No, sir. Nothing that --
- IO: Let me interrupt, Captain Francis. You said you were  
activated at the end of March 2002 or 2003?

WIT: 2003, sir.

Questions by the government:

- Q. Now, when you got to -- at some point you got to Iraq. Correct?
- A. Yes, sir.
- Q. Now, at some point were you stationed at Camp Whitehorse?
- A. Yes, sir.
- Q. When you were stationed there, what type of assignment did you have?
- A. Initially, I was assigned to a HMMWV as a machine gunner. I was on that truck for about seven to eight days, and from that point there, I went to work over at the EPW facility.
- Q. Okay. Do you recall when you started working at the EPW facility?
- A. It was probably about the second weekend in April.
- Q. Until when?
- A. Until they sent us to Kuwait, which was somewhere along the lines of July.
- Q. Okay. What were your duties there at the detention facility?
- A. Just to guard and watch over the EPW's.
- Q. Now, I want to talk and focus you on the period of time that Major Paulus was the OIC of the facility.
- A. Check.
- Q. That was roughly some time toward the end of May 2003. Correct?
- A. Yes, sir.
- Q. That he took over?
- A. Yes, sir.
- Q. Now, during that time, how were EPW's processed when they arrived at the detention facility -- or detainees?
- A. They were taken off the truck from whomever the capturing unit was. Generally, they were bagged and cuffed. If there was more than two of them, they were separated into different pens that we had. And at that

point there, the administration process would be handled, whereas, they would collect their information on where they were captured, the unit that was capturing them, the circumstances of the capture; and from there, we would take them and process them.

Q. What do you mean by "process them"?

A. Processing meaning, we would bring them over to an area where we would do a pat frisk, and that would then turn into a strip search for contraband or weapons they might have. And from there, whatever personal effects that we deemed, you know, that they shouldn't have -- if it was contraband, money, if they had a weapon, they had anything else on their person, we would take it from them, put it in a bag, put their name on it, put it to the side. And from that point there, if they were designated as somebody that they wanted to speak to further, meaning, the HET Team, for interrogation purposes, they would then be administrated into the 50/10 process. If not, they didn't want any other information from them, they would go into the cell area, and that's where they would stay. And they would just sit there, you know, just be sitting there amongst the other people.

Q. Okay. So let's say -- let's look at that a little more carefully. Now, during the period of time that these strip searches were going on, who would typically run that process?

A. Generally, it would be myself, and Sergeant Pittman.

Q. Why is that?

A. Because we were the only ones who really had any -- I guess, the training aspect of doing that. That was the main reason we were brought over there to begin with. And there was other Marines that could have did it, but a lot of the Marines didn't want to roger up to it, and they just felt that me and Sergeant Pittman did a good enough job, and that was that.

Q. What do you mean by training?

A. Be it that myself, and Sergeant Pittman are both (b)(6) that was the main focus for us being put over there.

Q. Okay. During the time that you would conduct these strip searches -- again, just talking about the period of time where Major Paulus was the OIC, how many

occasions can you recall that you were conducting those types of strip searches on a detainee, and Major Paulus was present?

A. I can't -- to be honest with you, I can't recall the exact amount of people that he might have been there for. Basically, when I was doing strip searches, I would focus on the individual that I was searching and, I, you know, the other people that were around me, I'd -- I didn't really watch what they were doing. I mean, I had an idea of what they were doing, but when I was in the process of doing the search, my concentration was on the individual.

Q. Okay. All right. Now, let's talk about this 50/10 procedure, what is that?

A. That's where they would make a person who they deemed that they wanted to get more information out of, stand for 50 minutes, they would be able to sit down for 10 to 15 minutes, and the process would last until the interview team came to speak those people.

Q. And what was the purpose of this process? This 50/10 process?

A. To wear the individuals down so they can retain -- get as much information out of them as they possibly could.

Q. Now, this time again, just focussing in on the period of time where Major Paulus was the OIC, who was typically -- well, how many guards typically would be on a shift watching the detainees during this 50/10 process?

A. Three people. It was a three-man shift. Each shift worked for a four-hour time block, so it would definitely always be three people. One was supposed to be a rover, but --

Q. Okay. But --

IO: Captain Francis, I apologize for interrupting, but I've got a question here that I need to ask, first.

TC: Yes, sir.

IO: You said that the 50/10 procedure would be, would be instituted on a particular prisoner --

WIT: Yes, sir.



IO: They wanted more information from them. Who is they?

WIT: They meaning the HET Team. The HET Team people -- or whoever the HET Team was getting their order from, sir.

IO: All right. Now, whenever either a single EPW or a batch of EPW are brought in by a capturing unit, would the Het team be right there and say, that's one we want to interview, that one we have no interest in. Would they be singling them out at that time or would that come later?

WIT: Actually, at some times they would or some times they would designate it to the capturing unit or they would wait and then Staff Sergeant (b)(6) would make that decision on who he thought that the Het team might want to go through that process.

IO: Okay. So the HET Team wasn't always at Camp Whitehorse when new detainees or prisoners were brought in?

WIT: No, sir. But they did arrive some time shortly thereafter. Usually, it was within an hour or two, they would show up and say, "Hey, listen, we want this guy".

IO: What I'm try trying to understand is, if Het wasn't there to tell you this is someone we have an interest in and this is someone we don't. Someone else would be making that call for you, so you knew who to do the 50/10 to, and who not to do it to; is that right?

WIT: Yes, sir.

IO: Go ahead.

*Questions by the government:*

Q. During this period of time, from, I guess, from the end of May until the beginning -- first week of June 2003, who was on your shift?

A. Who was on my shift?

Q. Correct.

A. Myself, Sergeant Pittman, and Lance Corporal (b)(6) were together.

Q. Now, did you ever have detainees that didn't want to comply with 50/10 during that period of time?

A. Yes, sir.

Q. Did you have more than one?  
A. At the time?

Q. More than one detainee that didn't want to comply with the 50/10 procedures?  
A. Yes, sir.

Q. How would you and those members of your shift make those individuals comply?  
A. We would yell, scream at them, and if they didn't want to comply to the directives, you know, as we were yelling and screaming at them, we would have to use the necessary amount of force to get them to comply. Meaning, we would have to either pick them up or we -- they -- we would issue blows to the soft meaty portions of the body, to the arms, using pressure points. Stuff of this nature is what we utilized.

Q. Okay. Um, please describe what you mean when you say pressure point or blows to soft tissue portions of the body?  
A. Pressure points meaning, if the individual is lying on the ground, there's certain pressure points in the body that we would try to touch on so that they would give us some type of reaction. And if they didn't react to that, we would physically pick them up or kick them with the side of our foot in order to get their attention because of the lack of communication, you know, that we just couldn't say, "Hey, get up." Because they didn't know what the heck we were talking about. So, sir, once we would get them up, and if they didn't want to stay up, they would receive blows to the inside portions of the thighs. Shots to the --

Q. Inside or outside -- what do you mean --  
A. The outside portion of the thigh, blows to the arms, tried to -- if we had to use force on them, it was within the torso and the leg areas, and the areas where they would -- we didn't want to hurt them, we just wanted to make sure they knew they had to do what they had -- what they were being told to do.

Q. Okay. Now, while you were doing this, were the detainees -- did they have sandbags on their heads?  
A. Yes, sir.

Q. Did they have flexycuffs binding their wrists?  
A. Yes, sir.

Q. Behind them or in front of them?  
A. Depending on the size of the individual, majority of the flexycuffs were behind their wrist. If we had a larger than average Iraqi, we would bound their hands in front of them.

Q. Okay. When you say "blows" you used the word "blows", what do you mean by the word "blows"?  
A. Strikes to the portions of the body that would have enough force to make the person comply with the directive that was given originally.

Q. Strikes with what?  
A. With the knees, the fist, the palm of the hand, open hand --

Q. You ever hit them in the head?  
A. No.

Q. Why?  
A. Because basically, the head is an area where you can receive the most damage.

Q. Okay. Now, these are things that you did?  
A. Yes, sir.

Q. These are things that you observed Lance Corporal (b)(6) do?  
A. Lance Corporal (b)(6) he utilized necessary amount of force to get the EPW to comply to a direction that was given to him.

Q. Did you observe those blows, techniques, that you just described?  
A. He might have utilized some of those, sir.

Q. Okay. Sergeant Pittman?  
A. Yes, sir.

Q. Now, was Sergeant Pittman -- was he your NCOIC during that time?  
A. Yes, sir.

Q. Okay. Let's talk about 3 June 2003, focus in on that date. On that particular date, did you receive any

prisoners of significance?  
A. That was the night we received (b)(6)  
Q. Okay.  
A. And the two (b)(6)  
Q. Okay. And you say, (b)(6) were those the (b)(6)  
A. (b)(6)  
Q. Do you recall what time of day this was?  
A. I remember it being dark because they had called for lights. The logbook said it was 1930 or 1900, but I believe it was darker than that.  
Q. What happened when they arrived, do you recall?  
A. I was actually in the area we were living in, and I remember a commotion. I was actually in my rack. I remembered Lance Corporal (b)(6) coming into the area that lived in that was adjacent to the EPW's area and saying that they needed some help out there. They asked Lance Corporal (b)(6) to come out and help them out, and I watched him try to find his gear and he seemed as though he was not wanting to go so I got up, got dressed, and walked out to see what was going on.  
Q. Okay. Did you have any participation in the initial processing into the camp?  
A. I processed all three of them.  
Q. When say "processed" what do you mean?  
A. I did the initial search of them.  
Q. Okay.  
A. And that was about the extent of the process.  
Q. Okay. Let's talk about the two (b)(6) first. Please describe how those searches went.  
A. I thought those two fellas searches went well without a hitch. Everything the were told to do, they did it. They were scared, they didn't not comply with anything. They were pretty much -- everything that they were told to do, they did it and they did it fast.  
Q. Okay. They went off without incident to your recollection?  
A. Yes, sir.

- Q. All right. Let's talk about (b)(6). Describe his search.
- A. Well, as they were pulling him out of the cage -- or taking him out of the cage, that is, he was resisting from the minute -- I believe it was Sergeant (b)(6) took him out of the cage and was bringing him over. And he was resilient to walk over to the area where the strip search was going on. Once he was brought over there, he was put on a wall like all the rest of the EPW's and his bag on his head was removed.
- Q. Okay. How about the flexycuffs on his wrists?
- A. After I asked him if he spoke any English and he didn't give me any indication of that because -- the flexycuffs were removed, and his hands were put on a wall same style as everyone else.
- Q. Okay. Do you recall who was present, for example, was Major Paulus present during this processing (b)(6)?
- A. I remember Major Paulus being there.
- Q. Okay. Now, let's talk about -- okay. So you got him against the wall, what happens next?
- A. I do an initial pat frisk of him. I go up one side of his body and down the other side. I didn't feel any contraband, and at that point there I turned him around, and that's when I asked him to remove his traditional garment. As I did that I asked him a couple times, and what I would do is -- I would generally, most of them didn't understand English, I would use hand signals to indicate what I wanted him to do. Meanwhile, even trying to describe it to him. As I did this he reached out and grabbed my hand. This -- because I was pulling to him when he reached out and he grabbed me.
- Q. Okay. (b)(6) grabbed you?
- A. Yes, sir.
- Q. You said he grabbed you by the hand, did he grab your hand --
- A. He grabbed my hand/wrist area. I've never had an Iraqi EPW since I've been there, which was almost two and a half months, touch me or grab me since that time frame.

Q. Okay. Can you describe for us the strength you felt in that grip?

A. He latched on to me. I mean, it wasn't like latched on and pulled me. He latched on to my hand and he grabbed me. It was just a shock. I think a shock to everybody.

Q. Okay. Again, if you could, the force of the grip, did it feel like a strong grip, weak --

A. It was a relatively strong grip.

Q. Okay. And once that occurred what happened?

A. At that point there, Sergeant (b)(6) slapped his hand down, and then Sergeant (b)(6) and (b)(6) delivered blows to the inside portion of his body, his arms, his chest area.

Q. Okay. When you say "blows" how many are we talking about?

A. I'd have to say two to three, four strikes apiece until he went to the ground.

Q. Okay. How forceful were these blows in your estimation?

A. They were pretty forceful, sir.

Q. Okay.

A. They were enough to knock him down.

Q. When you say, "knocked him down" what do you mean?

A. He fell to the ground.

Q. Okay. On his hands and knees or --

A. He went down -- he squatted down to his knees.

Q. Okay. Is anybody carrying a weapon at this point as the search is being conducted?

A. Sergeant (b)(6) had his M16 slung to his right side. Lance Corporal (b)(6), I remember he had a weapon pointed at us in that direction. He was to the far right. I can't remember if there was anybody else on the other side of the pen. From what I remember everybody had a weapon. Everybody had a weapon because that was -- everybody had to have their weapon on them at all times. I remember Sergeant Pittman, I believe went into -- he had one of the individuals into the cell area at that time. I didn't see him at this point and Staff Sergeant (b)(6) and Major Paulus were doing administration type or paper work in the breezeway area, and my focus was on this individual at this point.

Q. Okay. So (b)(6) reaches out and grabs your hand,  
and -- is it (b)(6)  
A. I believe it was (b)(6) at the time.

Q. (b)(6) and Sergeant (b)(6) then -- are they  
punching (b)(6) in the side?  
A. Yes, sir.

Q. With fists, closed fists?  
A. Yes, sir.

Q. And that drops (b)(6) to his knees?  
A. Yes, sir.

Q. What happens next?  
A. I say that's enough, that's enough because I want to get  
this guy searched so we could get him into the cell area  
because I had to work that night. So I get him up, and  
I ask him again to remove his garment, and this time he  
knows -- he gets the idea because I'm like this, you got  
to take this off -- if you want, I can demonstrate it  
for you and get more of an idea of what -- so anyways, i  
get the guy's traditional garment off of him. He's  
standing there, I tell him to remove his shorts, and he  
doesn't understand this either, so I show him what I  
want him to do. And again, I'm pointing at him telling  
him I want you to remove your shorts, you, and he  
reaches out and grabs my hand again.

Q. Same hand?  
A. Same hand. Same hand and again, at that point, the  
contact was made by the EPW/detainee, the Marines and  
sailors felt I was threatened more than likely, and they  
administrated hitting this man.

Q. Same type of blows as before?  
A. Yes, sir.

Q. More blows this time or the same number?  
A. About the same.

Q. Okay. And what happened with (b)(6)  
A. This time he went to the ground. When he went to the  
ground he squatted down and I remember him kind of  
falling to his left side.

Q. Okay. What was he doing with his hands --

IO: Excuse me, who administered the blows this time?

WIT: Sergeant (b)(6) and (b)(6).

IO: Same two?

WIT: Yes, sir.

*Questions by the government:*

Q. What was he doing with his hands?

A. He put his hands up.

Q. Okay. So his hands up in front of his face?

A. Up in front of his face, kind of squatted down like this.

Q. Kind of like a boxer's defensive stance?

A. Like he was squatting down.

Q. Um, how long would you say that on the second occasion from the time he grabbed your hand through the period of time that the blows were being administered, how long a period of time did take before the blows stopped?

A. A few seconds. It wasn't very long. I mean, it was probably three, four seconds.

Q. Okay. Then what happened next?

A. I got him back up again. This time I explained to him, I said, remove your shorts. So I get this guy to remove his shorts finally, and I do a full body inspection. I have him open up his mouth to see if there's anything in his mouth, under his underarms, I lift up his testicles, and then I ask him to turn around and I'm showing him everything I want to do. Because remember, we had a translator there so we had a real hard time communicating with these people.

Q. Okay.

A. So at that point there I turned him around -- I tried to tell him to turn him around and then I turned him around and again, I would show him everything that I want him to do so I bent over and told him I wanted him to spread his but cheeks so I could do a visual anal inspection. He didn't bend over at that point far enough that (b)(6) forced him over. He pushed him from the back side and I inspected his anal area.



Q. What happened next after that?  
A. We kicked his clothes to him and we started yelling at him to get dressed. "Get dressed, get -- hurry up, get dressed" screaming at him like this.

Q. Okay.  
A. Once he finally got dressed and he moved real slow while getting dressed, I put the flexycuffs back on him and I bagged him.

Q. Okay. Did you have any difficulties putting the flexycuffs on?  
A. No, I didn't have any difficulty putting the flexycuffs on at all.

Q. Did you have any difficulty with the flexycuffs at all?  
A. When I brought him into the cell area, the flexycuffs that I had put on him came off.

Q. Okay.  
A. I don't know whether or not they were faulty flexycuffs or they weren't on right. What I would try to do is put two finger width space between the cuffs so that they wouldn't be too tight on the people. So when I put the cuffs on this guy, I brought him into the cell area. He tripped over a piece of concertina wire that was in the middle of the floor -- I believe that's what he did. And he went to the ground, he fell to the ground. When he went to the ground, he came out of the flexycuffs.

Q. Okay. What did you do when he came out of the flexycuffs?  
A. I followed him to the ground, and I maintained contact with his left arm, meanwhile, while I'm on the ground with him, I had him by his left arm and I had it like this.

Q. The witness is demonstrating that he has his left arm behind his back?  
A. Sir, when he -- when I had his arm like this his other arm was down on the floor, and he was on his knees, he forced his arm back to me.

Q. That witness is now demonstrating that he has his right arm out in front of him, palm down.  
A. (b)(6) forced his arm back, and he's kind of strong for forcing his arm back on me. I called for a set of cuffs and I was able to get him cuffed back up and stood him

in the center of the room.

Q. Was he cuffed in the front or behind?

A. He was cuffed from behind, sir.

Q. Okay. Could you please describe for us in your estimation, (b)(6) level of resistance that he was putting up when you were trying to put the flexycuffs on?

A. He had a pretty strong -- strong arm. His arm was strong. Whether he was left or right handed, I don't know. I mean, he was pretty forceful in forcing me back because I'm not a little guy and he was able to move my arms back, so I actually had to get it up there on him. And after that, he didn't no longer resist.

Q. All right. So you put the flexycuffs back on, he's got a sandbag on his head at this time?

A. Yes, sir.

Q. And where did you take him?

A. I put him in the center of the room in the rear of the building.

Q. All right. When was the next time that you saw Mr.

(b)(6)  
A. That early morning hours, around 0400, was the next time I saw him.

Q. And what were the circumstances that were able to see him at 0400?

A. At that time, they were lying on the ground.

Q. But what were -- why were you in a situation that you could see him at 0400 in the morning?

A. Because I had to go to the EPW Area and work there. It was my shift.

Q. Okay. Was this during the 50/10 process?

A. Yes, sir.

Q. So the HET team hadn't arrived yet to interrogate

(b)(6)  
A. No, sir. No, they hadn't been there for that yet.

Q. Who was on the shift with you at this time?

A. Myself, Lance Corporal (b)(6) and Sergeant Pittman.

Q. And when was your shift supposed to go, from 0400 until when?

A. To 0800 in the morning.

Q. And you were supposed to monitor these prisoners during this 50/10 process?

A. We were told by the shift that we relieved that they wanted the 50/10 thing -- keep them standing. Let them sit down for whatever.

Q. Now, the shift that you relieved, did they indicate whether (b)(6) was being cooperative with 50/10 or not?

A. I really can't recall, sir.

Q. All right. Let me back up for a moment and -- had you received any information that (b)(6) linked at all with the ambush with the 507th Maintenance Battalion at by this time?

A. When they first initially came in, I remember Sergeant Pittman saying that they think this guy had something to do with the ambush, but that didn't even phase me because we had so many people brought in to the facility -- excuse me. That they said was involved in that, that he was just another guy at that point.

Q. Okay. But there was something a little be different. Correct? In that they found him with a weapon?

A. Later on I found that out.

Q. When do you find that out?

A. I think it was that evening that we were working.

Q. Okay. And you actually saw the weapon?

A. I didn't see the weapon until the next morning.

Q. Okay.

A. Because they had it looked up in a box.

Q. Is that the first person that had been potentially linked -- that was caught with some evidence, I guess, that you were aware of?

A. No, sir. We had another individual that was caught with a backpack, and I think he had a Walkman or some Nintendo games, and an Army jump suit that we had caught.

Q. When was this -- when did this occur?  
A. That was probably about a month down -- our first month there.

Q. So some time in April?  
A. Yes, sir.

Q. Okay. So you're starting your shift at 0400, and what happened?  
A. Basically, just sitting there. We were watching him move around for a little while because it's 4:00 in the morning and we don't want to be there -- or even be up at that point, and then they are laying there, and we left them lying there. Then, it was time for them to get up. So I was told to go in and get them up.

Q. Told by whom?  
A. Sergeant Pittman told me to go in and get them up.

Q. Okay.  
A. So I went in --

IO: I'm sorry. Who is "they were lying there"? We're talking about all the EPW's or just (b)(6) and the two (b)(6)

WIT: Just (b)(6) and the two (b)(6) sir.

IO: They were lying on the floor?

WIT: Yes, sir.

IO: They were doing the 50/10?

WIT: They were lying down at this point.

IO: Sleeping -- or apparently sleeping?

WIT: Apparently -- well, apparently.

IO: Okay.

*Questions by the government:*

- Q. Okay. So Sergeant Pittman tells you do go and get them up, what happens then physically?
- A. I go in, I get the two (b)(6) up. They get up with no problem. Now, they didn't want to get up, but they got up. Then, I went back to the area where (b)(6) was lying, and I tried to get him up. And he didn't want to get up.
- Q. Okay. When you say you -- when you're initially trying to get him up, what were you doing to try and get him up?
- A. First, I yelled, "Goom, Goom, Goom," three or four times to him, and then I kicked him with the side of my foot in his foot. I kicked him in the foot and then I asked him to get up, and he still wouldn't get up, and I said -- I applied a pressure point to the back area of his jaw in here.
- Q. Okay. The witness is pointing to the left-hand side of his jaw, right below the ear.
- A. Check. At that point there, I administrated a good amount of pressure to him. He still didn't show any signs of wanting to get up. So my next phase was I grabbed him by the back of his head. He had a bag on him. So I grabbed him by the back of his head. I felt down the ridge of his nose and underneath his nose, and I applied a rich had to the underneath his nose to get him up.
- Q. Okay. So the witness just took his right hand and put it behind his head, and took his left hand, holding it flat and perpendicular to the ridge of his nose and pressed up against the under ridge of his nose. Okay.
- A. I tried to get him up at that point, and he still didn't want to get up.
- Q. So what was your next -- what did you do next?
- A. I put him -- I laid his head back down on the ground, whereas, he didn't just drop it down, he had the strength of his neck and everything, he laid it down. And I just grabbed him by the back of his arms, and i just picked him up. I just physically picked him up by the back of his arms, with the cuffs in the back of him. So it hurt him even more picking him up like that.

Q. Okay. All right. Did he -- he did get up on this?  
A. He got up at that point.

Q. Okay. Did you have anymore difficulty with (b)(6)  
A. At that point there.

Q. From that point forward?  
A. He actually started wondering around in the back of the pen. Walking around with the cover over his head. We gave him some water, and then later on in the evening -- I can't remember the whole time frames of everything. He got himself hung up in the concertina wire.

Q. Okay. Please describe that incident.  
A. He was walking around in the back of the pen, walked over to the concertina wire. At that point there, Sergeant Pittman and myself were sitting there, we saw him get hung up, and we said, "Let's go in there and get him out of there." So we went in, we removed his robe from the concertina wire because he was in it. And I grabbed him, turned him around, and told him to start walking over there. I think I had him by his arm and Sergeant Pittman gave him, like, a backhand. He kind of stumbled backwards --

Q. All right. Let me stop you there --

IO: Let me stop you for a second. When you began your shift at 0400, (b)(6) and the (b)(6) the (b)(6) were inside of one of the holding buildings on the deck. Right?

WIT: Yes, sir.

IO: Now, you're talking about (b)(6) being outside in the holding pen?

WIT: No, sir.

IO: Okay. Because you keep saying pen, but they're still inside the building?

WIT: They're inside the building.

IO: All right. Hey haven't been taken outside into the recreational area of the holding pen?

WIT: No, sir.

IO: Do you know what I'm referring to?

WIT: Yes, sir.

IO: All right.

WIT: Well, the whole place is like a pen really, but --

IO: Well, you said the diagram is to your left, which is IO Exhibit 6, so I understand where you are at this point.

WIT: We're right in here, sir.

IO: Okay. You're in the northern-most holding building?

WIT: Yes, sir.

IO: Right next to the troop building?

WIT: Yes, sir. And there is concertina wire dividing this right here. (b)(6) is back here and the two other fellas are right here.

IO: Okay. I understand now.

*Questions by the government:*

Q. So you unleashed (b)(6) from the concertina wire, are you doing anything after you've released him from the concertina wire to (b)(6)

A. Myself?

Q. Right.

A. Try to point him back in the direction of the center of the room.

Q. Now, did you do anything to (b)(6) to try to get him oriented back into the center of the room? Did you use any type of force.

A. I might have given him a -- I might have hit him in the side of leg with my knee to get him to move over to that area.

Q. Okay. So you did that -- did (b)(6) say anything to you at that point?

A. He didn't say anything at that point. Sergeant Pittman gave him a shot, and then he --

Q. Let me stop you there. You said, "Sergeant Pittman gave him a shot" what do you mean, "gave him a shot"?

A. Gave him a backhand.

Q. The witness has used his left hand and demonstrated a backhand with a closed fist. Is that what he did?

A. Yes, sir.

Q. Was with the left hand?

A. Well, whether or not his hand was closed, I don't know.

IO: What area of (b)(6) body?

WIT: His chest area.

*Questions by the government:*

Q. Okay. From their observations could you tell us what your observation was of the force that was applied?

A. It was a fair amount of force. To the point where he stumbled back, and I grabbed him.

CC (MR. ZIMMERMANN): Excuse me. Just for clarification so we can follow, enforced by whom at what point?

TC: Forced by Pittman on (b)(6) with a backhand?

WIT: Yes, sir.

TC: That's who you're talking about?

WIT: Yes, sir.

*Questions by the government:*

Q. So Sergeant Pittman gives him the backhand, what happens next?

A. He started saying, "why, why, why" and I brought him over to the center of that room area and got him over there now. And he's saying, "why, why why" and then he said something along the lines of, "My children, my children", and I said something like, what about the children of those other people who the people who were in that ambush had. And he said something about he had 11 children, and at some point in this time frame Sergeant Pittman -- whether or not (b)(6) stepped towards him or not, delivered a side kick to him.



TC: If I could have the witness step down and demonstrate the kick that he observed?

IO: Sure.

WIT: I was kind of standing here with the guy, he was right here, Sergeant Pittman was over here --

Questions by the government:

Q. Okay. Witness has demonstrated that (b)(6) was standing in front of him. Sergeant Pittman being standing off to his left --

A. It was kind of like right in front of him.

Q. Okay.

A. And for example these gentlemen are sitting here was the rack that was being used as a toilet bowl.

Q. And -- all right. So Sergeant Pittman would be standing directly facing these racks?

A. Yes, sir. So (b)(6) was here, I was here, the rack is here --

Q. Okay. So (b)(6) is standing perpendicular to you?

A. Yes, sir. Right next to me. That's how I remember seeing Sergeant Pittman's foot hitting the guy when he went back.

Q. Okay. If you could, just demonstrate for us the type of kick that you saw?

A. Something like that there.

Q. The witness just demonstrated a side kick where he lifted up his leg and kicked straight out from his body to the side. Take a seat.

From your observations, vagues what kind of force was used in this kick?

A. It was enough force to send individual back and fall to the ground, where he almost his head on this rack over here.

Q. And he's sandbagged and flexycuffed at this time?

A. Yes.

Q. What happened at that point?

A. I picked him up and I said, Sergeant Pittman, let's get

the hell out of here before we hurt this guy, so --

Q. Were you guys angry with him at this time?

A. Yeah, we were angry.

Q. All right. So did you get out of the pen at that point, you and Sergeant Pittman?

A. We exited the pen. We left there and went back and sat down, and we stayed there.

Q. Now, what about (b)(6) You said that he fell down almost hitting his head on these racks as he falls, what's he doing?

A. I picked him back up, told him to stand there, and he stood up until it was time for him to sit back down again. I mean, he walked around some more. He didn't get himself all caught up in the wire again.

Q. Okay. What time would you estimate it was in the morning when this occurred?

A. I can't honestly remember, sir.

Q. Was it still dark outside?

A. It was still dark.

Q. Were you having any problems with the lights in the buildings that night?

A. Not on that particular night, but the lights were pretty bad. We had fluorescent pink lights if I remember correctly, and it didn't give off a lot of light.

Q. Okay. All right. So from that point forward, did (b)(6) start complying with the 50/10?

A. He stayed standing up until it was right around the time frame for him to sit down and have breakfast.

Q. Okay. From that point forward, from the point of the kick, did you notice anything about (b)(6) that caused you any concern about his health?

A. Not really, sir. Well, he didn't eat that much, he didn't drink that much.

- Q. Okay. Was there anything about him that made you check him in any way as far as his chest area?
- A. That was later on. After he had eaten the little bit of food that he had, he had a little bit of peanut butter, and he had some water. After that time period I was told -- Sergeant Pittman said, "Take him out into rec yard." So I took him out to the rec yard. I escorted him out to the rec yard, I put him in the rec pen, and there was a point at which I reached down and I palpated around in his chest area because he was showing signs of discomfort.
- A. I took him out there, put him in the rec pen and then there was a point at which I reached down and palpated because he was showing signs of discomfort.
- Q. What do you mean, "showing signs of discomfort"?
- A. He was just lying on the ground moaning and -- he was just lying there. It's, like, I'm looking at him and I'm, like, what the hell is the matter with this guy? He just didn't look right at that point.
- Q. Okay. So you said you were checking his chest area. Correct? And you're motioning to the side in front of his chest?
- A. What happened was he was lying there, probably right around before our shift ended. I was sitting there and I was looking at him, and I walked into the -- I asked him first of all, even though we didn't have any dialogue, I asked him what the hell is the matter with him. I got up and I walked into the rec yard, I stood over him, I'm looking down at him and he kind of motioned toward his side. At that point there, I straddle over him, and I felt around his chest, and he kind of grimaced in pain as I kind of touched him in here. And I asked him if his chest hurt him and he kind of "uh", like this type of thing to me. At that point there, I went back and I sat down and -- well, sat down inside that rec area, and when I saw Sergeant Pittman later on that morning, I told him that I think this guy needs to see the doc.
- Q. And what was Sergeant Pittman's response?
- A. He said he saw the doc last night, hell see the doc later on. There's no need for him to see the doc right now.

Q. Okay. Now, during that particular shift, anything else happen of significance to (b)(6)?

A. During that time frame, I had (b)(6) when I first brought him out to the rec yard, I told him to stand up. He didn't want to stand out. I walked him right to rec yard, I had him by his arm. I escorted him right into that area, I put him in the rec yard, I said, "You're Goom" as I went to walk away, he fell down on the ground. At that point, he fell -- I felt that he blatantly fell to the ground, like, I'm not going to do what he's telling me to do. I told him to get up several times, boom, boom, boom, he didn't want to get up. I reached down because he wouldn't get up and I grabbed him by the neck area, right in here.

Q. Okay.

A. When I grabbed him by the neck area, I told him --

Q. Okay. Let me stop you there. The witness just motioned to the portion of his neck right around his Adam's apple, gripping it with his thumb and his finger.

IO: Now, was this during the same 0400 to 0800 shift.

WIT: It was 0400 to 0800, sir. On the 3rd -- well, it was the 4th now.

IO: Right. And when you grabbed (b)(6) by the neck, this was on the same shift? This wasn't on a later shift?

WIT: No, sir. Still the same shift.

IO: Right towards the end of that shift now?

WIT: It was right towards the end. It was right around 0700, 0715, somewhere within there.

*Questions by the government:*

Q. What kind force did you use when you grabbed him by that area of the neck?

A. I used a controlled amount of force due to the fact that -- I just wanted to make sure he got -- my attention was there. He knew that I was telling him -- this is what we want you to do, you know, it was an amount of force that I had control over.

Q. Did -- were you gripping him real tight there on the neck?  
A. I mean, I dug in there a little bit, but it wasn't like I was trying to pull his Adam's apple out of his neck or anything like that.

Q. Was he grimacing in pain when you were doing this?  
A. No, sir.

Q. Um --  
A. As I had him, I told him, "You are going to do what we tell you to do here", and then I let go of him.

Q. Okay --  
A. And he didn't make any facial expressions or anything.

Q. Okay. Did you notice after that point for the rest of your shift if (b)(6) was having any problems with his throat at all?  
A. No, sir.

Q. You didn't notice or --  
A. No. He drank some water because I threw the water jug at him. He had drank some water and he just laid there. Basically, just laid there.

Q. So the only indication of discomfort he was in the rib area?  
A. Apparently. He didn't want to stand for anything.

Q. All right. So your shift ends at 0800. Correct?  
A. Yes, sir.

Q. What when was the next time you had any interaction with (b)(6)?  
A. The following morning would be midnight to 0400.

Q. Okay. Midnight to 0400 of what day?  
A. That's the 5th.

Q. Okay. And what was your interaction with him?  
A. My interaction -- I didn't really have any interaction with him. At that point there, we were told that guy is to be left alone, no standing, no anything, just let him lay there if that's the case, and that's that.

Q. Who told you that?  
A. That's what Staff Sergeant (b)(6) had told everybody. That guy needs to be left alone. Apparently, this came from the HET team. Just higher-up people wanted to speak with him.

Q. Okay. So you were told that he was potentially, an important source of intelligence?  
A. Yes, sir. Due to the fact that he had this weapon. And again, I didn't even see this weapon until later on that morning. The morning of the 4th.

Q. Okay. All right. So during that shift from midnight to 0400, what were your observations of (b)(6)?  
A. He just laid there. That night there, if I remember correctly, the generator went down. We pen-lighted the room, and he just laid there.

Q. Is this inside the holding building?  
A. Yes, sir.

Q. Did you touch him at all in any way?  
A. No. Not that I can remember, sir.

Q. Do --  
A. I don't remember going into the area.

Q. Did you observe Sergeant Pittman or Lance Corporal (b)(6) touching him in any way?  
A. No, sir. It was a pretty un-eventful night. We just sat there and shot the breeze. Everybody -- that 50/10 thing was done, they were done. They were just like everybody else now, they were laying around.

Q. Okay. Now -- okay. So your shift ends at 0400 on the 5th of June, did you see (b)(6) again?

IO: Hold on. You said the 50/10 was done, that is with respect to the 50/10 was over, completed with respect to (b)(6) and the (b)(6)

WIT: Yes, sir. Most of the HET Team came. They sat down and talked to these people. No more 50/10.

IO: So they're just like every over detainee, EPW that came in and had already been interviewed by the HET?

WIT: Yes, sir.

IO: No need to do the 50/10 no more?

WIT: Yes, sir. No more cuffs, no more bag, they were just sitting in the room, they would eat drink, and, you know, they could carry on small conversations between each other, we didn't mind.

IO: Okay. Thank you.

Questions by the government:

Q. So again, shifts ends at 0400 on the 5th of June, when is the next time you have any interaction with Mr.

A. (b)(6) The next time I see him is the early morning hours of the 6th when he's found dead.

Q. How is it that you were involved with that?

A. My sleeping area where I slept was on top of the roof of the troop building. Staff Sergeant (b)(6) rack with right next to mine. Corporal came over and we had a ladder that we climbed up and down, came over and said to Staff Sergeant (b)(6) that somebody's dead. I overheard this because it was hot, I can't really go to sleep, so I overheard that. I asked (b)(6) if he wanted me to come down with him to help him -- if he needed any help.

Q. Okay. During that day of the 5th, after your shift ends at 0400, what else are you doing that day? Anything?

A. During -- on the 5th?

Q. Right.

A. I got sent out on a mail run after I went back -- I went back to sleep. At 0400, I went back to sleep. I got up probably around 0730, 0800. We we're told that they needed a couple of people to go out on a mail run, so I went out on the mail run with the other Marines. And we went to Talil, and we were there for -- I don't know, several hours just picking up mail. Then we came back and we sorted it all.

Q. Okay.

A. After that point there, I came back to where we lived and they had a Sheik -- that was supposedly up North to capture. Actually, he was supposed to turn himself over and he didn't. And we had the Sheik, which we made accommodation for over in another area of the EPW Camp,

where the HET Teams would generally do their interrogations, this guy had a nice cot, he was going get different kind of accommodation than what the other people were because he was just suppose to turn himself over.

Q. Okay. Now, during the time you were in this process, did you hear anything about (b)(6) defecating himself?

A. I was with Sergeant Pittman -- over with him, and I had heard that the guy had defecated on himself, and that they're having a hard getting him out of the room, and that was about it.

IO: I'm sorry. When was this? What time frame? He was brought in on the 3rd, is this the 3rd, 4th, 5th, or the 6th?

WIT: This is the 5th, sir.

IO: After you came back from the mailroom?

WIT: Yes, sir.

IO: You learned that he had defecated on himself?

WIT: I was in the area with Sergeant Pittman where the Sheik was. And I'm with Sergeant Pittman, and we're watching this Sheik, and somebody came over because we were wondering what was taking so long. They wanted this guy out of their room, and we found out that this fella had defecated on himself.



IO: Okay. Thank you.

Questions by the government:

Q. Now, were there prisoners during your time there at Whitehorse, the detention facility, were there prisoners that were taken because of their medical needed to see

(b)(6)  
A. I don't know if they were taken to see them. I know that Doctor (b)(6) [ph] came to the facility at one point, and he did an evaluation of one of our people that we had with us, but we had taken him at another time, earlier time to the hospital in Nasariyah because he showed -- he was having a seizure -- well, that's what we were expected, he was having a seizure. And I actually in the cage with him trying to do some type of first aid for him, and we took him to Nasariyah hospital.

Q. Okay.

A. Were they ever taken to see Doc (b)(6) [ph] or Doc (b)(6) I don't know.

Q. Okay. So -- but you recall prisoners -- I guess you just described this incident with this one prisoner. Did you ever call or being incidents with prisoners where they were given the medical attention by either Doctor (b)(6) or Doctor (b)(6) [ph] because they were deemed to be -- were too ill to be treated by corpsman.  
A. Only this one individual that I can remember, sir.

Q. He was suspected of having seizures?

A. He had a big goiter, I think it was a goiter on the side of his neck he had a seizure -- this one particular time that we took them to Nasariyah hospital. I was on duty with Lance Corporal (b)(6) and I said, (b)(6) go get us a corpsman", and I went into the cell area -- may not have been the smartest thing for me to do, but I went in the cell area by myself, and I held this guy's head because it looked like he was going to bite his tongue off or something. And (b)(6) told one of the other guys to come out and watch over everything while I was in there.

Q. When you heard the Mr. (b)(6) had defecated himself, and you were involved with the (b)(6) and you and had heard that he had defecated himself.

A. My thoughts were that this guy needs to see somebody.

He needs some type of medical treatment.

Q. And why is that?

A. Because he's defecated on himself.

Q. Okay. Um --

A. We had a thing right there. It was a -- a lot of the people kept getting the hebe jeebees. A lot of people had the runs and stuff like that. I don't know if he got that, or what happened to him. But like I said before, he didn't look good at that one point, and then, you know, a lot of guys going to the bathroom all over themselves.

Q. The hebe jeebees, do you recall what kind of treatment the Marines were getting at?

A. They were given a pill.

Q. They'd just give you a pill?

A. They'd give you a pill -- I guess, to dry you out. In fact, I had it at one point and they give a pill to dry out, and that was about it.

Q. Okay. I'm going to back up now and go back to this when you were talking about the 50/10 procedure and the type of force you need to use on the detainees -- on the average detainee or requirement of the 50/10. Okay.

A. Yes, sir.

Q. Was Major Paulus or (b)(6) present from you (b)(6) and Pittman were conducting 50/10:

A. I think Staff Sergeant (b)(6) might have been around at some time frame. Major Paulus, I can't remember there is anything that won't rely on the.

Q. Okay. These techniques that you describe that you're using, means to the thigh, and pressure points, and getting people and in torso area. Are those techniques that you used routinely here that wouldn't comply with the 50/10?

A. The situation dictated, sir. If the person was compliant, and he stood going during the course of the time frame, we didn't have to utilize any force on him. But if he was going to be resilient to stand, we had to do what we had to do to get them to comply.

Q. Did you think there was anything wrong with the techniques that you were using?

A. I didn't think there was anything the matter with it.

Q. And why is that?

A. Because nobody ever said anything that it wasn't. Nobody ever told us that it wasn't so we were under the impression we were doing the right thing.

Q. Okay. Now, let's talk about Sergeant Pittman specifically. Other than the time you saw him kick and backhand (b)(6) have you ever seen him do that to any other prisoner?

A. I've seen him kick other prisoners, you know, the sides of the legs, but I've never seen him back hand anybody, or anything like that. He might be able to get a nudge to the arm or something like that, but I never seen him get that forceful.

Q. So that's the most forceful you ever saw him get?

A. Yes, sir.

Q. Seen him get?

A. Yes, sir. Now, we were physical. When we gave them shots to the arms or legs, they weren't love taps. They were blows, hard strikes.

Q. As a purpose, you wanted to make them feel more uncomfortable sitting than they would be if they complied and stood. Correct?

A. Yes, sir. Basically, that was about it. Their sit time was their rest time. They could sit down, and when it was time to stand up, they would go and stand up, and were going to be forced to stand up.

Q. Did you ever have an occasion where you had somebody that was not complying with 50/10 -- or excuse me, had been seen by the HET Team, and then the HET Team had requested you to continue this person to do the 50/10 procedure?

A. Maybe once or twice.

Q. Was that Major Paulus' time he was OIC?

A. No, sir.

Q. Would that have been the time that Sergeant Pittman was in your group as NCOIC?

A. He and I worked together the entire time we were there.

Q. You said it happened a couple of times. With the

HET Team coming back and saying, please make these individuals continue to do 50/10 correct?

A. Yes, sir.

Q. Would you actually do that? And would you actually do that?

A. Yes, sir.

Q. Okay. Were any of those individuals not --

A. Yes. There was a for long period of time. Let's say for example, well, make them stand for a little while longer. We'll be back at lunch time. Something like that. We'll be back in a couple of hours.

Q. For any of these individuals, that you can recall, did you still have to use these same techniques to make them stand up?

A. Sometimes.

Q. What was your impression as to why were -- after the HET Team had spoken to them, why do you have to continue to make them stand up?

A. Because the HET Team probably thinking that they were utilizing us as a fear instiller to the EPW, and basically tell them, "Hey, you're going to go back there with these guys and they are going to make your life hell unless you tell us what we want to know. I don't know, sir. I don't know what their chain of thought was on that.

Q. Was that your impression?

A. That was my impression.

IO: So -- pardon the interruption, but so what you are saying is that you thought the HET Team was using you as the bad cop, and you were the good cop?

WIT: Yes, sir.

IO: And, if you didn't like the -- this is my thoughts, now, my words. So if you didn't like the 50/10 procedure before our interview with you -- this is the HET Team now, we're going to send you back to the 2/25 guys, and they are going to continue it. So tell us what we need to know and tell us now, and then you can just go back and be in the general population sitting down.

WIT: Yes, sir.

IO: Is that right?

WIT: That was about the extent of it, sir.

IO: Did the HET Team know that you were doing this 50/10?

WIT: I believe so, sir, since they were the ones that told -- I don't know -- there were so many HET guys, sir, we fell under so many different units while we were over there. Somebody at one time or another told us to do this because we didn't just think this up. We didn't dream, just do 50/10 so these guys -- we weren't talking to them. The other guys were doing the talking to them. We weren't getting any information from them, we didn't even have a translator for our own selves.

IO: It's your belief that even those another follow on HET came along aft 7th MEU pulled up. Right? In other words, you've got some different HET Team members come in?

WIT: Yes, sir.

IO: But even those guys, the follow-on HET -- the knew that this 50/10 procedure was in place, and that they were just fine with that?

WIT: I would have to say, yes, sir, because nobody ever said anything different to us.

IO: Now, no one from HET Team told you to stop it because it's wrong or in violation of some provision of the Geneva Convention or anything like that?

WIT: No, sir.

IO: Do you know of any HET Team members actually witnessed this 50/10 -- I mean, for example, did anyone come into the -- one of those holding buildings and see an EPW with a bag over their head, cuffed behind their back standing say, "What are you doing here? What's going on?"

WIT: No, sir. Not that I can remember. I mean, if they came in and saw the guy standing there, nobody ever said anything about it --

IO: Do you think they ever witnessed that?

WIT: I can't say --

IO: Some were standing and cuffed?

WIT: Yes, sir, because they would come and these guys would be standing -- they would be standing there looking at me cuff them when they got there.

IO: So they would come to the building, and say, "Okay. We want to talk to that guy now."?

WIT: Yes, sir. These people actually had a bag on and flexycuffs when they went over to this area where thee guys talked to them.

IO: So whenever the HET Team would interviewing someone, they would wait down in their little building, which was some distance away and say, "Just bring EPW Number 1-2-3 down to us." They'd actually come up to the building, and physically see the EPW in the building?

WIT: Yes, sir.

IO: And they could see that the EPW was hooded and cuffed at that time?

WIT: Yes, sir.

IO: And --

WIT: They didn't -- most of the time, they didn't want the -- they didn't want the EPW to see their face. Why, maybe it was because when they are out in the town, they didn't want a conflict of interest maybe. But, yeah, these guys were hooded and cuffed when these guys came here.

IO: If you know, when an EPW would be taken to the HET buildings to be interviewed would the hood remain on or would it be taken off.

WIT: 5It would remain on. Especially when hey were first captured and they just got there, it would remain on. If these guys -- if the HET Team guys came back to talk to them again, the hood might be off, and they would sit down and have a conversation with them, but most of time, sir, it was on.

IO: Thanks.

Questions by the government:

Q. I'm going to show you a photograph, and it's photograph 13 -- 17 of IO Exhibit 9. Do you recognize any individual in that photograph?

A. Yes, sir.

Q. Who is that individual?

A. That's (b)(6)

TC: Thank you. That's all the questions I have, sir?

IO: Before we begin cross, let me just take a couple of minutes. Lets's take a five minute recess to 0915.

The Article 32 Hearing recessed at 0908, on 2 February 2004.

The Article 32 Hearing was called order at 0919, on 2 February 2004.

IO: This Article 32 will come to order. All parties who were present when the court recessed are once again, present.

Accused and counsel are present with the exception of Lance Corporal (b)(6) who is now absent with his consent and permission. From his attorneys, Lance Corporal (b)(6) is suffering flu-like symptoms, and is not feeling well, and has requested permission to be absent from the courtroom while he goes to the 7-Day Store or the dispensary to get some medication or something to help him.

So we will proceed in his absence. Is there going to be cross-examination on Lance Corporal (b)(6) and who would like to go first? Mr. Zimmerman?

CC (MR. ZIMMERMANN): We have agreed that Lieutenant Folk is going --

IO: Lieutenant Folk.

CROSS-EXAMINATION

Questions by the military defense counsel (1stLt Folk):

- Q. Good morning, Lance Corporal (b)(6)
- A. Good morning, sir.
- Q. I want to draw your attention briefly to your background with 2d Battalion, 25th Marines. This deployment that took you to Kuwait, and ultimately, Iraq, was your first deployment as a Marine?
- A. Yes, sir.
- Q. Your first deployment with C-25?
- A. Yes, sir.
- Q. And before you actually left for the Gulf, you were in Camp Lejeune for a period of time. Right?
- A. Yes, sir.
- Q. And the time in Camp Lejeune was spent basically, rushing you and the rest of the Marines in your unit through the steps that were necessary to get ready for deployment. Right?
- A. Yes, sir.
- Q. And that involved some conditioning hikes, basic training in a variety of areas?
- A. Yes, sir.
- Q. Okay. Now, during that period of time, you did not receive any classes on how to deal with enemy prisoners of war, is that what your testimony was on direct?
- A. We didn't receive any training on how to house EPW's. We received training on the five S's and a "T".
- Q. In terms of taking EPW's from a combat situation and moving them to the rear. Right?
- A. Yes, sir.
- Q. So -- no training was given to you that dealt with how to run a detention facility. Correct?
- A. No, sir.



Q. No training on how to treat detainees at such a detention facility. Correct?  
A. Yes, sir.

Q. No training on dealing with common Iraqi criminals. Correct?  
A. Correct, sir.

Q. Were you ever told at Camp Lejeune prior to leaving for the Gulf that on your arrival in Iraq, you'd be expected to have day to day contact with violent Iraqi criminals?  
A. No, sir.

Q. Were you ever told -- well, at any period prior to arriving at Camp Whitehorse, how to in-process detainees at a detention facility?  
A. No, sir.

Q. Were you ever told prior to arriving at Camp Whitehorse, what was considered an appropriate way to address detainees at a detention facility?  
A. Um --

Q. I'm sorry. And when I say address, I mean, speak to -- I'm sorry, sir.  
A. No, sir.

Q. Were you taught Arabic?  
A. As far as dealing with the public, we were taught common courtesies.

Q. And when you say "in the public", you're talking about when you're on a patrol or something. Right?  
A. Yes, sir.

Q. Were you taught Arabic prior to leaving for Iraq?  
A. No, sir.

Q. All right. And you said after arriving in the Gulf area, you spent approximately two weeks in Kuwait?  
A. It was less than two weeks.

Q. Okay. Then maybe a week in Iraq prior to being sent to Camp Whitehorse?  
A. Yes -- we were at Camp Whitehorse, sir, but before being pertinent to the EPW facility.

Q. During any of that period of time in Iraq, did you

receive any training on working at a detention facility for enemy prisoners of war?

A. No, sir.

Q. To your knowledge, did anybody else ever receive training along those lines?

A. No, sir.

Q. When you found out you were going to work at Camp Whitehorse, in the detention facility, you were essentially just grabbed by staff sergeant who said, "Hey, Lance Corporal (b)(6) you and Sergeant Pittman are coming to Camp Whitehorse." Right?

A. Yes, sir.

Q. Essentially, at that point, grabbed you out of this position where you were working as a machine gunner and took you to the detention facility. Right?

A. Yes, sir.

Q. He gave you a brief, verbal, kind of explanation of what the SOP was at this detention facility?

A. I guess you can call it an SOP. He just told us basically what we were going to do.

Q. Told you that deadly force was authorized. Right?

A. Yes, sir.

Q. He told you how you were going to handle EPW's in terms of using zip ties and sandbagging their heads during in-processing?

A. Yes, sir.

Q. And that he also informed you that you as a Marine would be living in the same facility as the EPW's you detained?

A. Yes, sir.

Q. You agree that that brief by Staff Sergeant (b)(6) lasted maybe five to ten minutes max?

A. That's about it, sir.

Q. That was the extent of the your training for working as a guard in this detention facility. Correct?

A. Yes, sir.

Q. And as a result, you had to rely on your training as a  
(b)(6) Right?  
A. Yes, sir.

Q. And just briefly, (b)(6)  
(b)(6)  
A. Yes, sir.

Q. And you've done that for about four years?  
A. Yes, sir.

Q. And everything you employed working at Cam Whitehorse  
was -- in terms of detention facility were in some way  
based on what you learned during those four years as a  
(b)(6)  
A.

Q. I want to talk about this in-processing. A portion of  
the Camp Whitehorse detention facility, you said that  
you and Sergeant Pittman processed in the majority of  
the detainees there?  
A. Yes, sir.

Q. And you personally say you processed approximately 800  
Iraqis in this facility?  
A. About a hundred, I'd have to say.

Q. Would be about half of the total that the facility  
processed during it's existence?  
A. Yes, sir.

Q. And you would agree that it was pretty common that  
Iraqis being processed into the detention facility would  
not comply with the commands or orders that they were  
given by the guards such as yourself?  
A. It's pretty common, sir.

Q. And this left a lot of tension between the guards and  
Iraqis?  
A. Yes, sir.

Q. Now, you became pretty familiar with the Iraqis that  
were held at this detention facility. Correct?  
A. Some of them were there for quite some time so we got  
familiar with them.

Q. And you also became familiar with why these various

Iraqis were being held at the detention facility. Correct; that is, you'd know if they were somebody coming from (b)(6) situation or if they were just a criminal. Right?

A. Yes, sir. To a degree.

Q. And it wasn't uncommon to have violent prisoners housed in your facility?

A. They were all violent, sir.

Q. Now, it wasn't uncommon for you to have prisoners that would be housed here because they had actually -- they caught either committing or -- suspected of committing violent criminal acts against other Iraqis. Right?

A. Yes, sir.

Q. Do you remember a prison that the Marines there called "Nasty One"?

A. Yes, sir.

Q. And that was a prisoner who had actually chopped off his sister's nose with some kind of sword or machete?

A. Yes, sir.

Q. He when arrived at your facility he was covered in blood. Right?

A. Um --

Q. Bloody clothes I should say.

A. He was in bloody clothes, sir. The other one -- what was the other fella's name --

Q. You one name, "Kill your brother -- Kill my brother"?

A. Yes, sir.

Q. And you showed up after actually having killed his brother. Right?

A. He was covered in blood, sir.

Q. And did you receive any training about how to deal with violent criminals such as that prior to arriving at the facility?

A. No, sir.

Q. Fair to say that based on everything that was going on and having prisoners such as those we've just described, that the Marines were concerned for their safety and well-being while -- during this in-processing period of the detention. Correct?

A. Absolutely, sir.

Q. And as a result, that process was conducted in a free speed and manner. Right? You wanted to move them thorough as fast as you could?

A. Yes, sir.

Q. And that included speeding and off-loading of detainees from whatever the vehicles were that they were brought in on, sir?

A. Yes, sir.

Q. And that included speed and moving them -- moving them from wherever they were off-loaded into one of those two in-processing pens?

A. Yes, sir.

Q. And once you got them to the in-processing pens, they were immediately placed on their stomachs. Right?

A. Yes, sir.

Q. And placed on their stomachs so they could be immobilized so you could kind of keep track of all these bodies?

A. Yes, sir.

Q. And following this period of time on their stomachs, is when whoever is conducting the strip search and pat down frisk, or whatever you want to call it, until that process occurred. Right?

A. Yes, sir.

Q. And sometimes it was necessary to use force to get these prisoners to lay down on their stomachs during this in-processing portion of the detention?

A. Yes, sir.

Q. Sometimes it was necessary to use force to get them off their stomachs so that they could be strip searched or pat searched?

A. Yes, sir.

Q. And that wasn't uncommon?  
A. No, sir.

Q. Staff Sergeant (b)(6) was present pretty much for every detainee's in-processing?  
A. Yes, sir.

Q. He was aware of what was going on?  
A. Yes, sir.

Q. He never told you, Lance Corporal (b)(6) we need to alter our in-processing procedure?  
A. No, sir.

Q. Sergeant Pittman was never told to stop doing in-processing the way he conducted his in-processing?  
A. No, sir.

Q. And again, all of the things that were done during this in-processing period of the detention for Iraqis was done with the Marine's safety as the paramount concern?  
A. Yes, sir.

Q. And as part of this concern was safety, I think you said on direct examination that you actually had one Marine who's job was to essentially just point the saw in the general in-processing area in case one of the prisoners acted up?  
A. Well -- no. The saw was in the -- or in the holding area, sir.

Q. Fair to say you had him covered with a weapon, though?  
A. Yes, sir.

Q. All right. Now, I want to turn your attention to that 3rd of June when (b)(6) and the (b)(6) the (b)(6) -- you said (b)(6) was resistant from the first time you saw him that evening?  
A. Yes, sir.

Q. And comparing (b)(6) to the 99 or approximately hundreds of other prisoners at in-processing, if you could repair his level of resistance, or would you rate him out of ten?  
A. I would have to say an eight.

IO: So -- Let me stop you there. For the record, Lance Corporal (b)(6) has now rejoined us in the courtroom and is sitting next to his counsel his counsel.

Questions by the defense [1stLt Folk]:

Q. And your scale of one to ten --

A. From the point of where he initially stated?

Q. From whole in-processing portion, yeah?

A. I would have to say it was a nine. The fact is, I never had one of them people reach out and grab me before.

Q. So your opinion of (b)(6) during this whole in-processing portion of the detention at Camp Whitehorse facility was that he was pretty much a pain and that kind of prisoner.

A. He was extremely resistant, sir.

Q. Okay. Now, this process of searching (b)(6) involved putting him up against one of the walls that -- located on the east edge of those two holding buildings. Right?

A. Yes, sir.

Q. The witness is indicating the lower left side of the middle holding building on the exhibit.

During this process, you put him up against the all and you kicked his feet apart. Right?

A. Yes, sir.

Q. Removed the sandbag from his head?

A. Yes, sir.

Q. Cut his zip ties off his wrists?

A. Yes, sir.

Q. And at that point, you spun him around so that he was facing you. Right?

A. Well, I asked him initially if he spoke any English.

Q. And he didn't respond?

A. He didn't respond.

Q. So you spun him around. Right.

A. Yes, sir.

Q. He's facing you, and when you first spun him around is when you first started making hand gestures to him to disrobe. Right?

A. That's correct.

Q. And he at that point grabbed your wrist?

A. That's correct, sir.

Q. And that's when Doc (b)(6) and Sergeant (b)(6) began physically -- well, first thing that happened is Doc (b)(6) -- Sergeant (b)(6) slapped his hand away. Right?

A. That's correct.

Q. And after his hand was slapped away by Sergeant (b)(6) is when Petty Officer (b)(6) who is a Corpsman, and Sergeant (b)(6), who's one of the Marines assigned to that detention facility began to strike him in the ribs. Right?

A. That's correct, sir.

Q. And by ribs, we're talking about the right and left side of his upper torso. Correct?

A. Yes, sir. They were both flanking him.

Q. And they were flanking him to essentially to provide security for you?

A. Well, Doc (b)(6) primary function for being there was to examine.

Q. His primary function wasn't to punch prisoners?

A. No, sir. He was there to do a physical inspection of the individual. Sergeant (b)(6) was there for security purpose but --

Q. You said they punched him hard enough to knock him down to his knees, essentially?

A. Yes, sir.

Q. And you said somewhere between two and four strikes each?

A. Yes, sir.

Q. That is, Sergeant (b)(6) hit him two to four times and Petty Officer (b)(6) hit him two to four times?

A. Yes, sir.



Q. And Staff Sergeant (b)(6) was present during this in-processing. Right?

A. Yes, sir.

Q. You're not aware of whether or not he saw this take place, though?

A. Sir, during this time frame, my focus was on the individual.

Q. What did you do to (b)(6) during this time frame?

A. I stepped away.

Q. You just stood there while the sergeant and the petty officer punched him in the ribs?

A. Ye, sir. There was nothing else I could do.

Q. And when we're talking about punching (b)(6) in the ribs, we're talking about closed fist punches. Right?

A. Yes, sir.

Q. All right. After he was knocked down to his knees by these repeated punches from Sergeant (b)(6) and Petty Officer (b)(6) he was picked back up so he was on his feet?

A. Yes, sir.

Q. Who picked him back up; is that you?

A. I can't remember, sir.

Q. Okay. And at that point, he was again given this verbal command -- or this demonstrative command to disrobe?

A. That's correct.

Q. To remove his Destasha?

A. That's correct.

Q. And he removed it at that point?

A. Yes, sir.

Q. And he was wearing boxer shorts then. Right?

A. Yes, sir.

Q. And at that point you gave him another verbal and demonstrative command to remove those shorts?

A. Yes, sir.

Q. And at this point was the second time where he reached out and grabbed you by the arm -- or by the wrist?  
A. That's correct, sir.

Q. And again, Sergeant (b)(6) slapped his hand away so that he was no longer gripping your arm. Right?  
A. Yes, sir.

Q. And again, Sergeant (b)(6) and Petty Officer (b)(6) administered this series of two to four blows each on the right and the left sides of (b)(6) ribcage. Right?  
A. Yes, sir.

Q. And again, they administered closed fist punches. Correct?  
A. Yes, sir.

Q. And again, they administered these closed fist punches to right and left side of (b)(6) ribcage until he fell to the ground. Right?  
A. Well, arms and ribs, sir.

Q. Arms and ribs. Okay. But we're talking about the upper portion of his torso and ribcage. Right?  
A. Correct.

Q. And his left and right arms. Right?  
A. Yes, sir.

Q. And again, we're talking about closed fist punches. Right?  
A. Yes, sir.

Q. All right. And again, this process was repeated by the petty officer and the sergeant until (b)(6) was on his knees and -- I guess, what you call, "being compliant" at that point?  
A. Well, he went to his knees and he kind of shrowled[ph] away.

Q. Now, you would agree that they were using substantial amount of force in delivering these closed fist punches to the right and left side of (b)(6) torso?  
A. Yes, sir.

Q. And you would agree that the reason (b)(6) shrowled[ph] was given the nature of these blows that

were being administered to him?

A. Yes, sir.

Q. Now just moving your attention away from this actual incident where they delivered these repeated blows to the right and left side of his ribcage with closed fist for a minute. You actually became aware later on that Sergeant (b)(6) injured himself during this process, didn't you?

A. Yes, sir. He had hurt his hand.

Q. And you heard him talking about the fact that he needed to get some kind of medical attention because he had injured his hand while punching (b)(6) with a closed fist. Right?

A. Yes, sir. That's from what I understood.

Q. After this was accomplished a second time, (b)(6) again was returned to his feet?

A. That's correct, sir.

Q. And at that point, the command was for him to remove his boxer shorts -- or whatever shorts were that he was wearing?

A. That's correct.

Q. Do you remember what color those were?

A. White.

Q. White boxer shorts?

A. Yes, sir.

Q. How far down his legs did they go?

A. All the way way off.

Q. How long -- when he was wearing the boxers, how far down did these shorts go on his legs?

A. I can't recall how far down his shorts were on his body.

Q. And after husband his shorts were removed, that's when Petty Officer (b)(6) had to administer this force to get him to bend over?

A. After I did the initial inspection of his body, looked his mouth, he lifted his testicles to see if there was any contraband. And then spun around. At that point there, I asked him to bend over --

Q. And that's when Doc (b)(6) had to make him bend over?

A. Yes, sir.

Q. Because he wouldn't do it on his own?

A. Correct.

Q. And that involved Doc (b)(6) - Petty Officer (b)(6) I should say, utilizing some kind of force to Mr. (b)(6) back to get him to bend over?

A. He pushed him from the upper back and pushed him down.

Q. Let's talk about this look in the mouth real quick. You said you needed to look in (b)(6) mouth?

A. Yes, sir.

Q. And again, this was a pretty serious safety issue for the Marines there. Right?

A. Yes, sir.

Q. Because you had an earlier prisoner who had been hiding a razor blade in his mouth?

A. That's correct, sir.

Q. And that prisoner had to have force administered to him to have that razor blade removed. Correct?

A. Yes, sir.

Q. Now, when you searched (b)(6) mouth, he wasn't compliant in that way either, was?

A. No, sir.

Q. And you had a guy actually utilize force to get (b)(6) to open his mouth. Right?

A. I didn't. I believe (b)(6) opened up his mouth.

Q. And so you didn't actually have to touch (b)(6) to make him open his mouth, but Petty Officer (b)(6) did?

A. I believe so, sir.

Q. And the force he used to get (b)(6) to open his mouth by grabbing his throat. Right?

A. No. He just opened his chin like that. Just kind of grabbed his forehead and lifted it up like that.

Q. Okay. So it's your testimony here today that you never touched (b)(6) to force him to open his mouth?

A. No, sir.

Q. But that Petty Officer (b)(6) did have to touch

(b)(6) to make him open his mouth?

A. Yes, sir.

Q. And you never touched (b)(6) neck during this period that you did the search; is that right?

A. Not at that period. No, sir.

Q. Okay. So after this whole search process is accomplished, you said you kicked (b)(6) clothes to him?

A. That's correct.

Q. He put his clothes back on. Right? And at that point, you were responsible to take him from the in-processing pins, to the holding building. Right?

A. Yes, sir.

Q. And he was placed in another set of zip ties at this point. Right?

A. He had on zip ties at this point when I took him into the holding area.

Q. Right. And you had to put new zip ties on him because when you searched him you had removed the zip ties. Right?

A. That's correct, sir.

Q. So he gets new zip ties put on, and he gets another, or he gets a sandbag put back on his head. Right?

A. Yes, sir.

Q. And this is just a standard kind of dusty sandbag, like every other one you guys had in Iraq?

A. Yes, sir.

Q. Okay. Now, during this walk back to the holding building, (b)(6) escaped his flexycuffs and fell down?

A. Yes, sir.

Q. And this involved another scuffle between you and Mr. (b)(6) Right?

A. It involved a scuffle, not another scuffle. It --

Q. You and (b)(6) fell down to the ground so you could restrain him and get him back into his flexycuffs. Right?

A. Correct. (b)(6) went to the ground. I maintained

contact with his arm, and I had his left arm on the ground, and I was applying an arm bar so I could get more strength and get him back up.

Q. When you say "arm bar" why don't you describe what you are talking about.

A. (b)(6) was on his hands and knees -- his hand and knees. I had -- he was, like -- he had his arms behind his back. He was forcing his left arm back on me. At that point there, I pushed his arm up to make sure he didn't resist any further.

Q. The witness has just indicated by using his left arm in the small of his back, how Mr. (b)(6) was resisting and fighting his efforts.

A. Yes, sir.

Q. You were able to gage his strength during the scuffle between to two of you?

A. Yes, sir.

Q. Would you agree that he was a pretty strong guy?

A. I would have to say so, sir.

Q. At this point, you'd agree that you still consider

(b)(6) a pretty uncooperative detainee?

A. Yes, sir, absolutely.

Q. Maybe the most uncooperative you've dealt with that far at Camp Whitehorse?

A. Yes, sir, he was very arrogant.

Q. You said that later that night you came on the 0400 to 0800 shift with Lance Corporal (b)(6) and Sergeant Pittman?

A. That's correct, sir.

Q. And you'd been instructed by the off-going shift of Marines, which consisted of Lance Corporal (b)(6) Lance Corporal (b)(6) one other Marine that -- to implement 50/10 on these detainees. Right?

A. That's correct, sir.

Q. And they told you, the off-going shift told you that Mr. (b)(6) had been un-cooperative the whole night. Right?

A. Yes, sir.

Q. And that wasn't really a surprise to you based on everything that you knew about (b)(6) from your experience with in-processing him. Right?

A. That's correct, sir.

Q. That actually pretty much made sense to you, didn't it?

A. Yes, sir.

Q. Now, you said that after the portion of time when prisons -- or detainees were laying down, at some point you decided it was time that they needed to stand up. Right?

A. At that point there, Sergeant Pittman said, "We're going to go in and get these guys up" -- or get those guys up.

Q. And you went and got up the Al Sakara[ph] Brothers?

A. I got up (b)(6)

Q. You didn't touch either of the (b)(6)

A. No. Because we -- either I did or we both went in and got them up.

Q. Do you remember having any contact with the (b)(6) brothers at all that night?

A. We had to get the (b)(6) to stand up a few times.

Q. Okay. Did you personally have any contact with the (b)(6) that night?

A. (b)(6) Yes, I did.

Q. Okay. Do you remember if you personally got them to stand up?

A. Myself, Sergeant Pittman, -- both of us got them to stand up.

Q. Do you remember, you personally, making one of those two brothers stand up that night?

A. I don't remember off the top of my head if I went in there and made anybody -- any of them stand up on their own.

Q. Do you remember, you personally, applying any force to either the (b)(6) that night?

A. Yes, I do.

Q. What did that involve?

IO: Excuse me for a moment? When you say, "that night" --

DC (1STLT FOLK): The morning of the 4th. I'm sorry, sir.

IO: Okay. So 0400 to 0800 shift?

DC (1STLT FOLK): Yes, sir.

*Questions by the defense [1stLt Folk]:*

Q. And what was that force?

A. Blows to the meaty portion of the of the thighs, and a shot to the arm.

Q. So you struck at least on of the two (b)(6) on that night with blows to the legs and arms to make them stand up?

A. At least one -- at least -- probably both of them, sir.

Q. So they weren't really being that compliant either that night?

A. No, sir.

Q. And it wouldn't surprise you to learn that you were identified in a photo lineup by one of those two brothers as having been assaulted by you that night -- being hit by you that night?

A. They actually said I assaulted them during the in -- well, the in-process time frame, but --

Q. So you've had a chance to read their statements?

A. Yes, sir.

Q. After you applied this force to the -- one or both of the (b)(6) strikes to the meaty portions of the legs and arms to get them to stand, you went in and go (b)(6) up. Right?

A. Yes, sir.

Q. All right. When you went in to get up (b)(6) you started out by yelling at him the normal command to make the prisoners get up, this goom. Right?

A. Yes, sir.

Q. And he wouldn't get up, would he?

A. No, sir.

Q. He was just laying down in the cell with a sandbag on his head and his hands flexycuffed. Right?

A. That's correct.



Q. All right. And at that point, you gave him a kick to get him up?  
A. I yelled at him a couple more times, and then I kicked him in the foot.  
  
Q. You kick him anywhere else?  
A. No, sir.  
  
Q. How much force would you say you used to kick his foot?  
A. A minimum degree.  
  
Q. But you didn't kick him anywhere else?  
A. Not that I can recall.  
  
Q. You think it's possible you kicked him somewhere else and you just don't remember?  
A. It is possible.  
  
Q. Is it possible you kicked him in the ribs?  
A. No, sir.

IO: Excuse me. Was (b)(6) wearing anything on his feet when you kicked him?

WIT: No, sir.

Questions by the defense [1stLt Folk]:

Q. Why do you say it's not possible that you kicked him in the ribs?  
A. Because I concentrated on his leg and his foot.  
  
Q. How many times do you think you kicked him?  
A. Two, maybe three times.  
  
Q. And that wasn't getting him to move at all?  
A. That's correct, sir.  
  
Q. And at that point, you utilized this pressure point that you described to get him to move?  
A. That's correct.  
  
Q. The pressure point you described is one that is located behind the ear. Right?  
A. Yes, sir.  
  
Q. You were doing this through a sandbag?  
A. Yes, sir.

Q. And this pressure point behind his ear, you utilized a pretty significant amount of force. Right?  
A. A good degree of force, sir.

Q. Enough to get somebody to move?  
A. You would think somebody would move. Yes, sir.

Q. He didn't react at all?  
A. None -- no reaction.

Q. Did he say anything?  
A. He didn't say anything, sir.

Q. Did he make any kind of moans or groans?  
A. No, sir.

Q. He just laid there limp while you were applying substantial amount of pressure behind his ear?  
A. Correct.

Q. Then you -- after this failed, you said you attempted to do some kind of picking up of his head by placing one hand behind his head, and one hand under his nose?  
A. Yes, sir.

Q. And -- but you utilized enough force to lift his head off the ground. Right?  
A. That's correct, sir.

Q. But he weighed a couple hundred pounds, didn't he?  
A. Yeah, he was a pretty good sized fellow, sir.

Q. Much larger than the normal detainees you dealt with. Right?  
A. Yes, sir.

Q. And you used enough force to lift his head off the ground, but you weren't able to lift him to his feet at this point. Correct?  
A. That's correct, sir.

Q. And you kind of dropped his head, and he maintained control over his body as he went back to the ground?  
A. Affirmative.

Q. And at this point, you also utilized a neck pressure point. Right?  
A. No. I already described to you I applied a pressure

point here, I also applied the pressure point to this area here, and that was it, sir. At that point there, I just picked him up.

Q. So you never applied any kind of pressure to his neck?  
A. Negative.

Q. What would a neck pressure point mean to you?  
A. What type of a neck pressure point?

Q. Well, I don't know. I'm asking you. What re the different kinds of neck pressure points?  
A. What are the different --

Q. Yeah. What are they?  
A. What are they?l.

Q. Yes.  
A. Let's see. You have a pressure in here, you have a pressure point here --

IO: You are going to have to describe this for --

DC (1STLT FOLK): I will, sir. I will describe it once he's done.

IO: All right.

WIT: And as far as I know, they are the only ones, sir -- and I think there is one up underneath the chin also, sir.

DC (1STLT FOLK): Okay. The witness has described the pressure point right along what would be the left portion of his neck, and a line going down from his left ear to the place where his neck meets his shoulders, describe the pressure point that he indicated by placing his hand in a "C" and putting his hand on both sides of the witness' Adam's apple. He indicated that there may also be a third pressure point located somewhere under the chin portion and did that by pressing his thumb up against his chin, the bottom portion of his chin.

*Questions by the defense [1stLt Folk]:*

Q. So one of those three neck pressure points that you describe is one that involves grabbing the witness around the neck. Right?  
A. Yes, sir.

Q. You said at that point -- so your testimony is that you didn't apply any type of neck pressure points to Mr. (b)(6) at this point; is that right?

A. That's correct, sir.

Q. You didn't use any of those three different pressure points that you just described for me. Right?

A. That's correct, sir.

Q. And you said that at this point, you just yanked Mr. (b)(6) up by the arms -- by the hands?

A. Yes, sir.

Q. And these are the hands he had zip tied behind him?

A. Yes, sir.

Q. And at this --

IO: I'm sorry. I hate to interrupt, but didn't you say just a few minutes ago earlier on direct that you used the pressure point that's behind the ear?

WIT: I did, sir, that's what I told him I did.

IO: Okay. But I thought -- maybe I misunderstood you, didn't you just ask the question if he used a neck pressure point and he said no.

DC (1STLT FOLK): I did, sir, that's correct.

IO: Well, I'm confused now.

WIT: I'm confused too, sir.

IO: Maybe we're using different terminology. Is this -- this morning you described that it was sort of behind the jaw and underneath the ear, is that considered a neck pressure point to you.

WIT: Not necessarily, sir. That's more or less a jaw pressure point at that point there, sir.

IO: But you did do that?

WIT: Yes, sir.

IO: This morning, on the 0400 to 0800 shift?

WIT: That's correct.

IO: All right. Go ahead, Lieutenant Folk.

DC (1STLT FOLK): Yes, sir.

Questions by the defense [1stLt Folk]:

Q. Do you remember making a statement to NCIS on the 6th of July about your involvement with (b)(6) [REDACTED]?

A. Yes, sir.

Q. And that was the statement you made at the royal - the royal - whatever the hotel was in Kuwait. Correct?

A. Check.

Q. Do you remember when you wrote that statement out for two NCIS agents?

A. I didn't write the statement, sir, NCIS people wrote the statement for me, sir. But, yes, I do remember giving that statement.

Q. Do you remember initialling an "X" to this paragraph for correctness?

A. That's correct, sir.

Q. Do you remember signing it at the end and saying that everything in the statement was true?

A. That's correct, sir.

Q. You remember having an opportunity to review that statement after they typed it out for completeness and accuracy?

A. Yes, sir.

Q. Do you remember swearing that everything in that statement was the truth?

A. That's true, sir.

Q. Similar to the one that you took here today. Right?

A. Yes, sir.

Q. And you just testified that you didn't apply any type of neck pressure points to (b)(6) [REDACTED] while he was in the holding cell. Right?

A. I said that I applied this pressure point here, and this pressure point here.

Q. Right. You said you didn't apply any kind of neck pressure point. Right?

A. That's correct.

Q. So the investigating officer just asked you what kind of pressure point you applied, you said it was this thing behind the ear. Right?

A. Whether or not that's a neck pressure point, I'm not a doctor so I really don't know whether or not it's a neck pressure point or not, but --

Q. Well, I just asked you whether you -- what you considered neck pressure points, and you stated that you didn't consider this to be a neck pressure point. You said that this is more like a jaw pressure point. Correct?

A. Correct.

Q. Okay. And you demonstrated some different neck pressure points, and when I asked you whether or not you applied any pressure at this point in the holding cell, you said, "no, I did not." Right?

A. That's correct.

Q. So your testimony here today is that while in the holding cell, you did not apply any kind of neck pressure points to (b)(6) Right?

A. Correct.

Q. So your statement that you made to NCIS in July, where you said I applied a neck pressure point to (b)(6) in the holding cell would be incorrect, wouldn't it?

A. Well, it's open to interpretation, I guess.

Q. All right. Well, I'll move on then if that's open to interpretation. You said after you yanked (b)(6) up by his hands, he was walking around the holding cell. Right?

A. That's correct, sir.

Q. And he was kind of moaning and groaning during this period of time he was walking around?

A. Yes, sir.

Q. Just kind of making noises and not saying anything in any kind of language you understood?

A. That's correct.

Q. Did he sound like he was in pain at this point?  
A. It's hard for me to say, sir.

Q. But he was moaning and he was groaning?  
A. He was moaning and groaning.

Q. And just wandering, and with a bag on his head?  
A. Yes, sir.

Q. And during this moaning and groaning, wandering with the bag on his head, you said it got tangled up in the concertina wire in this room?  
A. At one point, sir, yes, sir.

Q. And you said that Sergeant Pittman went in to get him out of the wire. Right?  
A. That's correct.

Q. You got him out of the wire, and you said Sergeant Pittman gave some kind of backhand?  
A. That's correct sir.

Q. Don't know if it was an open or closed fist?  
A. That's correct, sir.

Q. Don't know how far away from (b)(6) Sergeant Pittman was when he did this?  
A. Pardon?

Q. You don't know how far away from (b)(6) Sergeant Pittman was when he did it?  
A. No, sir.

Q. Don't remember how close or how far away they were?  
A. Relatively close. Within an arm's length away because --

Q. Obviously, it has to be an arm's length away, if he used his arm. Right?  
A. Yeah. And it wasn't a very big room we were in.

Q. Now, you said that this back hand that Sergeant Pittman -- whether it was open or closed fist, was it enough to make (b)(6) move a little bit? He stumbled?  
A. He stumbled back, sir.

Q. Okay. Now, you had said you were administrating what you called "shots to (b)(6) leg" during this period of time to kind of -- or -- and kind of move him around where you wanted to him to move?

A. I might have delivered a shot to the outside of his leg.

Q. Do you know why Sergeant Pittman delivered this open or closed backhand or whatever it was?

A. No, I don't, sir.

Q. (b)(6) was wearing a -- this robe at this period of time?

A. Yes, sir.

Q. This backhand, whatever it was, open or closed, hit him somewhere in his torso?

A. His chest area.

Q. Somewhere in his chest area? And you said that he - (b)(6) was saying, "Why, why, why," during this period of time?

A. Yes, sir.

Q. And you responded with -- well, you started talking about his children?

A. That's correct.

Q. And you were saying that he told you he had 11 kids?

A. Yes, he did.

Q. And you started talking to him about the children of the people that were killed in the 507th Maintenance Battalion's ambush?

A. Yes, sir.

Q. You talked about that because you knew he was part of the battalion. Right?

A. He had something to do with it, yes, sir. That's why he had the weapon, apparently.

Q. Do you remember who told you the background on this particular detainee?

A. Sergeant Pittman told me.

Q. How did he find out?

A. Maybe Staff Sergeant (b)(6) I don't know, sir. I wasn't involved when these people came there.



Q. But you searched all three of them. Right?  
A. That's correct.

Q. Would it be fair to say that you really didn't care too much for (b)(6) when you were having this conversation with him about families and dead soldiers from the 507th Maintenance Battalion?  
A. It would be fair to say that I didn't care for any of them.

Q. You didn't like most of these Iraqis?  
A. I didn't care for these ones that particularly came in, due to the fact that they had this weapon.

Q. You really didn't like (b)(6) because of all the resistance that he put up to you that whole night. Right?  
A. That's true.

Q. He was the most difficult detainee that you had in your time at Camp Whitehorse. Right?  
A. That's true.

Q. All right. So it was right about this time that you had untangled (b)(6), and this backhand that Sergeant Pittman delivered from an unknown distance, whether or not it was open or closed fist, we don't know but, Sergeant Pittman just out of the blue, kicked (b)(6). Right?  
A. Yes, sir.

Q. Now, you didn't see any of the wind up to this kick, for lack of better words. Right?  
A. That's correct, sir.

Q. You just saw a boot hit (b)(6).  
A. That's correct, sir.

Q. So you have no idea how Sergeant Pittman delivered this kick. Right?  
A. I'm relatively sure, sir, that he came across the side because I remember seeing Sergeant Pittman's foot hit the man.

Q. Okay. Well, let's talk about that for a second. You never saw him wind up or any of the preparatory actions for this kick. Right?  
A. To say I did, I really couldn't, sir.

Q. So the answer is -- to answer my question, that you didn't see the wind up, the answer is, yes. Right? You didn't see any of the lead into this kick. Right?

A. Just a little bit out of the corner of my eyes, sir. Other than that, I didn't see the entire preparatory move.

Q. First thing you saw was the boot hitting (b)(6). Right -- or the boot as it was coming around -- as the boot was coming towards (b)(6).

A. The boot as it was coming towards (b)(6) yes, sir.

Q. So you didn't see anything leading up to that point. Right?

A. No, sir.

Q. So you have no idea how Sergeant Pittman was standing when he delivered this kick. Right?

A. Not necessarily, sir.

Q. Well, you either did or you didn't. What you are telling me is that the first thing you saw was this boot as it was coming toward (b)(6). Right?

A. I saw Sergeant Pittman's boot hit (b)(6).

Q. And that was the first thing that you saw. Right?

A. I saw his leg coming at him, that was about it. Like I said, I caught it out of the corner of the my eye because I was focussing on the individual that was in front of me.

Q. So you don't know how Sergeant Pittman was standing when this kick was delivered?

A. Technically, no.

Q. So your demonstration that you did for Captain Francis on direct was speculation?

A. I'd have to say -- I'd say so.

Q. Sergeant Pittman is about (b)(6) isn't he?

A. I'm sorry. What was the question?

Q. Sergeant Pittman is about (b)(6) years old, isn't he?

A. I believe so, sir.

Q. Now, you said that this kick, the boot to the chest that you didn't see anything leading to, knocked (b)(6) over? He back pedalled and fell down?

A. That's correct, sir.

Q. And then you walked over to (b)(6) and picked him up after he fell down?

A. That's correct, sir.

Q. And then you told Sergeant Pittman that, "Hey, we got to get out of here, we just hurt this guy;" is that right?

A. I said "before we hurt this guy".

Q. So you told Sergeant Pittman at that point, "We got to get out of here before we hit this guy"?

A. Hurt.

Q. Before we hurt this guy?

A. Yes, sir.

Q. And it is your testimony that the two of you just exited this holding pen?

A. Yes, sir.

Q. And it was after you exited the holding pen, some time later this morning, that you don't remember any of these times. Right?

A. It's about almost, what? Eight months later. And I'm try together remember all these times, but I can't remember every specific thing that, you know, every specific thing and everything specific time.

Q. But you did have an opportunity to make some statements back in June and July, didn't you?

A. June and July?

Q. Of 2003? Some written statements?

A. That's correct -- well, it was not a choice matter, no.

Q. Well, you made three written statements. Right?

A. I made -- yes, I did.

Q. And you made one of those written statements while you were at Camp Whitehorse. Correct?

A. That's correct.

Q. Then you made two to NCIS. Right?

A. I gave them one full statement, and one-half statement.

Q. Right. So you made two statements to NCIS. Right?  
A. Yes, sir.

Q. Okay. And one of those times is the one that we talked about earlier when you were at that Kuwait City hotel. Right?  
A. That's correct.

Q. And that was the statement that NCIS typed up. Right?  
A. That's correct, sir.

Q. The statement that you had an opportunity to read over for correctness?  
A. That's correct.

Q. And initial after every paragraph?  
A. That's right.

Q. And sign that everything in the statement is true to the best of my knowledge. Right?  
A. To the best of my knowledge.

Q. Right?  
A. Yes, sir.

Q. You signed that statement, didn't you?  
A. Yes, sir.

Q. You swore that everything in that statement was true. Right?  
A. That's correct, sir.

Q. And that statement was made in July, which was a lot closer in time to when this incident -- all these incidents allegedly happened, than today, wasn't it?  
A. That's correct.

Q. Do you remember it was a lot fresher then, wasn't it?  
A. That's correct, sir.

Q. And that statement didn't mention Sergeant Pittman kicking (b)(6) anywhere, did it?  
A. No, sir.

Q. It didn't mention Sergeant Pittman delivering any kind of backhand to (b)(6) did it?  
A. That's correct, sir.

Q. Didn't mention Sergeant Pittman telling you, "We better get out of here before we hurt this guy," did it?  
A. That's correct, sir.

Q. That statement did, however, mention Petty Officer Bleigh and Sergeant (b)(6) hitting (b)(6). Correct?  
A. That's correct.

Q. It did mention (b)(6) escaping his flexycuffs, didn't it?  
A. Yes, sir.

Q. It mentioned you having to apply force to get him back in his flexycuffs; is that right?  
A. That's right.

Q. Now, after you and Sergeant Pittman left this holding pen because you said, "We better get out of here before we hurt this guy," at some point later that morning, it was time for the prisoners to go outside to a holding pen, which is indicated on the western most portion of that diagram. Right?  
A. That's correct.

Q. And you led (b)(6) out to that holding pen. Right?  
A. That's right.

Q. And you observed him at this period of time eating peanut butter and drinking water. Right?  
A. Before he went to the -- or before he went outside he did.

Q. So he already ate while he was still in the holding building?  
A. Yes, sir.

Q. And he was -- he was allowed to have the sandbag removed at this time period. Right?  
A. That's right, sir.

Q. And he had his flexycuffs removed at this point. Right?  
A. That's correct.

Q. And he fed himself. Correct?  
A. That's correct.

Q. And he drank water himself?  
A. Yes, sir.

Q. And then you led him out to the holding pen after eating and drinking. Right?  
A. Well, he had a little bit of peanut butter, and just -- but, yes, I did.

Q. Okay. And you led him out there utilizing what we -- what -- I think you testified that you had him in an arm bar?  
A. Correct.

Q. And it's a technique where you can maintain positive control over a detainee. Right?  
A. Correct.

Q. And after he got out to the holding pen, he was supposed to be standing there "gooming" at that time. Right?  
A. That's correct, sir.

Q. And he wouldn't do it again, would he?  
A. That's right, sir.

Q. He actually -- well, you said he just kind of flopped onto the ground?  
A. Yes, sir.

Q. And you kind of took that as a "screw you, Lance Corporal (b)(6) kind of gesture by him?  
A. Yes, sir.

Q. You interpreted that as an act of defiance by (b)(6) didn't you?  
A. That's correct, sir.

Q. The same kind of acts of defiant that you had observed from him throughout the portion of the in-processing. Right?  
A. Yes, sir.

Q. Same kind of act of defiance you dealt with him when he wouldn't stand up when you were administering the pressure points. Right?  
A. That's right, sir.

Q. Same kind of act of defiance as earlier, that even when you had to yanked him up by the hands. Right?  
A. That's right, sir.

Q. Kind of the same act of defiance as when he was questioning you, "Why? Why? Why"?  
A. Yes, sir.

Q. At this point, you walked over to (b)(6) Right?  
A. Yes, sir.

Q. And he was laying on the ground?  
A. Yes, sir.

Q. And you said you grabbed him by the throat. Right?  
A. Yes, sir.

Q. Pretty much exactly what you described earlier as one of these neck pressure points. Correct?  
A. That's correct, sir.

Q. Had your hand in kind of a "C" form?  
A. Yes, sir.

Q. And for the record, I'm holding my hand in the shape of a "C". And you grabbed him by the throat. Right?  
A. That's right, I did.

Q. And you said to him, "You will do what we tell you to do." Right?  
A. Yes, sir.

Q. You probably didn't use that same tone of voice, I would imagine, huh?  
A. It was a pretty forceful tone of voice that I utilized.

Q. It was forceful because you were angry at him. Right?  
A. Yes, sir.

Q. Because he was being defiant. Right?  
A. Yes, sir.

Q. And he had been defiant to you since he stepped into that detention facility. Right?  
A. Yes, sir.

Q. And you held that grip on his throat, that "C" shaped grip around his Adam's apple throughout the duration of your statement, "You're going to do" -- or "you will do what we tell you to do." Right?

A. Yes, I did, sir.

Q. And then you just released him. Right?

A. Correct.

Q. You did that because you were angry, obviously. Right?

A. Frustrated.

Q. Frustrated with (b)(6) Right?

A. Frustrated with the entire -- yeah, (b)(6) and the entire situation.

Q. Sick of him being defiant. Right?

A. That too, sir.

Q. Well, what was the whole situation that you were sick of you just described -- what were you sick of?

A. Sick of the fact that we were having to keep this individual standing up; sick of the fact that it's a hundred and some odd degrees out, and I'm in Iraq, you know; sick of the fact of just, you know, being there.

Q. Was it your opinion that this the 50/10 thing was kind of stupid?

A. To a degree.

Q. Something that you and the rest of the guards would not have done if you weren't told to do it. Right?

A. That's correct, sir.

Q. Not something that you administered because it was fun for you as a guard at a detention facility?

A. Things would have been much easier for us if we just had to sit and watch them.

Q. But the HET Team wanted you to do it so you did it?

A. That's correct, sir.

Q. And you said -- now, after you grabbed (b)(6) throat and said to him, "You're going to do what we tell you to do", he actually sat up when you told him to. Right?

A. Yes, sir.



Q. Seems to you at least at that point that your method of getting his attention was somewhat effective?  
A. Yes, sir.

Q. And he sat up, and he was still moaning and groaning at this time?  
A. He sat up, laid back down soon thereafter.

Q. And this moaning and groaning look he had been doing the night before when he was walking around the holing building?  
A. Yes, sir.

Q. Now, you said at some point that morning you walked up to him while he was moaning and groaning and you said you palpated on his ribs. Right?  
A. Later on in the morning.

Q. On the 4th?  
A. Yes, sir.

Q. Okay. And you say you palpated on his ribs, you were basically rubbing his chest area?  
A. I -- yeah. I touched his chest area.

Q. You said he was grimacing, he was making faces?  
A. Yes, sir.

Q. But he didn't have the sandbag back on at this point?  
A. No, sir. And he didn't have the flexycuffed either.

Q. And you said you told Sergeant Pittman that, "Hey, this guy needs to see a doctor"?  
A. In my opinion, I thought he did.

Q. But your testimony was that you told Sergeant Pittman that he needed to see a doc?  
A. That's correct.

Q. Because he was injured?  
A. I told Sergeant Pittman that I thought the guy needed -- I didn't know what was the matter with him, but I just said, I think this guy needs to see somebody.

Q. And that's another detail that you failed to mention in your statement to NCIS on the 6th, isn't it?  
A. That's correct, sir.

Q. Never mentioned that you told Sergeant Pittman that you thought he needed medical attention?

A. That's correct, sir.

Q. Now, you were aware that before any detainee went to see the HET Team, that they would be taken -- or they would be given a thumbs up essentially by a corpsman. Right? There would be a corpsman that would say this individual can be seen by HET?

A. I wasn't aware of that.

Q. You aware that the HET Team would ask the detainees if they had seen a corpsman recently?

A. I don't know what the HET Team would ask them.

Q. You'd have a doc walk through the detention facility every morning right after the morning reports. Right?

A. Yes, sir. At one time or another they would walk through.

Q. The docs, when they would walk through, Petty Officer (b)(6) or petty officer's -- they would walk through -- it was conducted to see if there was anything that the prisoners needed. Right?

A. Yes, sir.

Q. If the detainees had any medical issues?

A. Yep.

Q. And they didn't need to have a guard necessarily say, "hey, you need to check that guy out. Right?

A. Oh, it would be helpful.

Q. If somebody were to ask you, you would have said, "Hey, (b)(6) here, he needs to see a doctor. Right?

A. If somebody would have asked me.

Q. Well, that was the whole point of the medics walking into the whole facility. Right?

A. I didn't see the medics that morning, sir.

Q. But, it was standard procedure every morning, when the morning report was submitted to have one of the two medics, one of the two petty officers, one of the two corpsman, whatever you want to call them, walk through the detention facility. Right?

A. They would show up eventually.

Q. Every morning. Right?  
A. Well, not every morning, but they would show up.

Q. All right?  
A. Sooner or later.

Q. So it would be reasonable for you to expect on that morning, 4 June, that there would be a medic there at some point that morning, a corpsman there?  
A. At some time or another, they would show up.

Q. Sergeant Pittman would have known the morning of the 4th. Right?  
A. Sure.

Q. When you pulled Sergeant Pittman, testified and told Sergeant Pittman you thought the guy needed to see a medic, you didn't tell Sergeant Pittman anything about the fact that you had just grabbed (b)(6) throat, did you?  
A. No, I didn't because that just didn't happen.

Q. But it happened before you told Sergeant Pittman that you thought the guy needed to see a corpsman. Right?  
A. That's correct.

Q. Now, (b)(6) saw the HET Team that morning. Right?  
A. That's correct. As far as I know he did.

Q. Well, and he got checked out by (b)(6) at the time he went to see the HET Team, didn't he?  
A. I don't know, sir. I wasn't there the whole hour.

Q. Well, do you remember saying in your 6 July statement to NCIS that (b)(6) checked out (b)(6) at the time he went to see the HET Team?  
A. That's what I was told.

Q. So your statement wasn't correct in that you didn't note that information in your statement?  
A. Yes, sir.

Q. Following, you said you became aware of (b)(6) death on the early morning of 6 June. Right?  
A. That's correct.

Q. Somebody ran through the squad bay, the troop building as it's indicated on the diagram and said, "He's dead,"

basically. "He's not responding"?  
A. Yeah. I was on top when --  
Q. Somebody woke you up when you were trying to sleep?  
A. That's right.  
Q. And following (b)(6) death, there were a lot of rumors about how he might have died. Right?  
A. That's right, sir.  
Q. A lot of rumors circulating. Maybe he died of a broken neck, maybe he died because of that. Right?  
A. That's right, sir.  
Q. You became pretty concerned that your actions might actually have led to his death. Right?  
A. That's correct, sir.  
Q. You remember talking to Petty Officer (b)(6) about your concerns. that maybe you had -- what you did may have led to (b)(6) death?  
A. That's right, sir.  
Q. Did you ask him that whether you grabbing (b)(6) by the throat might have caused him to die?  
A. That's correct, sir.  
Q. And you were concerned because you grabbed him pretty strong, didn't you?  
A. I grabbed him in the neck area. I was concerned over the fact, that could my grabbing this individual could have had any influence on his death.  
Q. So you grabbed him hard enough to be concerned that you might have killed him?  
A. I grabbed him, yes. I admitted it. I grabbed him.  
Q. You said that you just grabbed him on the morning of the 4th in the holding pen. Right?  
A. That's correct.  
Q. You're saying you never grabbed him in the neck during the in-processing. Right?  
A. That's right, sir.  
Q. You're saying you never grabbed him by the neck while he was in the holding building. Right?  
A. That's right.

Q. Your conversation with Petty Officer (b)(6) lasted for a pretty significant period of time. Right?

A. Some time.

Q. Thirty minutes?

A. Something along those lines maybe.

Q. Talk containing about whether you might have killed (b)(6) Whether what you did could have led to his death?

A. That's correct.

Q. You also talked to Lieutenant Commander (b)(6) about those same concerns. Right?

A. That's correct.

Q. Told him that, you know, I grabbed this guy by the throat, do you think that could have killed him? Do you think that could have been the cause of his death. Right?

A. That's correct.

Q. Fair to say that you were pretty concerned about whether or not your actions led to his death. Right?

A. That's correct.

Q. Lieutenant commander (b)(6) told you that the best course of action is to talk to a lawyer if you needed to, other wise, just tell them to truth. Right?

A. No.

Q. He didn't tell you to tell the truth?

A. He just said -- he said -- I asked him. I said, "Is there any bones in your neck that could get hurt in that area of where I grabbed him," and he said, "There's a bone that sat way up on top of your neck". He explained to me the anatomy aspect of things and basically that was about it.

Q. So you don't remember him telling you that whatever you do, tell the truth?

A. No, I don't remember him -- it wasn't really an in-depth conversation, really. He just -- that was about it.

Q. I -- I want to go back to this kick you said you saw administered from Sergeant Pittman to (b)(6). You said what you basically saw was his foot traveling toward (b)(6) and hit him somewhere in the abdomen chest area. Right?

A. Correct.

Q. You don't remember exactly where it hit him?

A. It hit him in the chest.

Q. Somewhere in the chest area?

A. Somewhere in the chest area.

Q. The -- you said you don't know if (b)(6) made any motions toward Sergeant Pittman before this boot came into your line of vision. Right?

A. That's correct, sir.

Q. You don't know if (b)(6) did anything to get kicked like that?

A. I don't know if he stepped forward -- his foot might have stepped at him a little bit, sir, or I didn't notice any significant movement.

Q. You don't know what (b)(6) did prior to this boot hitting him. Right?

A. That's correct.

Q. You're aware that the detainees could actually, to some degree, see through the sandbags?

A. To some degree.

Q. They detect movement, and shapes, things of that nature. Right?

A. Yes, sir. I never had one on my head, but I'm sure they could see somewhat through the thing.

Q. Because one of the (b)(6) brothers was able to identify you as his assailant. Right?

A. He did, but I'm the one that did the strip search on him also.

Q. But you also testified that you did hit and kick this -- the (b)(6) brothers that night. Right?

A. That's correct. I utilized some bone force on them during the course of that night, but what his statement said is that I punched him in his stomach during the strip search time.

Q. And you disagree with that, you never punched him in the stomach during the strip search?

A. That's correct, sir.

Q. And this second shift that you stood following the morning of 4 June, the following day?

A. Yes, sir.

Q. And that was a -- I'm sorry. Midnight to 0400 in the morning shift. Right?

A. Yes, sir.

Q. It's your testimony that on that night, there was no florescent lighting available in the detention facility was using other lights to light the premises. Right?

A. As far as I could remember, sir, that's how it was.

Q. And on that night, you said there was nothing out of the ordinary about Mr. (b)(6) or the (b)(6). Right?

A. As far as I could remember, sir. I remember it being a pretty uneventful night.

Q. You don't remember Mr. (b)(6) doing anything that would lead you to believe he needed medical attention?

A. No, sir. He had seen -- if he got the proper medical attention, I would not have known.

Q. You didn't see anything from that night that led you to believe you needed to get a corpsman. Right?

A. No, sir. They were all sleep, they were all lying around.

Q. And that was the last time you or Sergeant Pittman or Lance Corporal (b)(6) had duty until after Mr. (b)(6) had passed away. Correct?

A. That's correct, sir.

Q. Let me just draw your attention back to the morning of the 4th. I apologize for jumping around a little bit, but that shift you stood from 0400 to 0800 in the morning on the 4th of June?

A. Check.

Q. Do you remember hearing Mr. (b)(6) gasping that morning while he was wearing his sandbag on his head?

A. He might have gasped when he got kicked.

Q. Don't remember hearing him gasping  
irregularly -- instead of breathing, just gasping?  
A. No, sir.

Q. The only thing you noticed that was out of the ordinary  
about (b)(6) that morning, medically, were these --  
his ribs that you said were sensitive?  
A. Yes, sir.

Q. And that's your -- that wasn't in your statement on the  
6th of July. Right?  
A. That's correct, sir.

DC (1STLT FOLK): I don't have any further questions, sir.

IO: (b)(6)

CC (b)(6): Yes, sir.

CROSS-EXAMINATION

Questions by the civilian counsel (b)(6):

Q. Just to clarify some things, I'm not going to go over  
what's already been said. How tall are you and  
approximately how much do you weigh?  
A. About 6-foot, sir. Right now, I currently weigh about  
210, 215.

Q. Back when you were in Iraq, you were about 198,  
200 pounds; is that correct?  
A. About 191.

Q. You know Sergeant (b)(6) approximately how big was  
he back during this time frame?  
A. He was about my size.

Q. Okay. And Doc (b)(6) is smaller than that?  
A. (b)(6) is a short stocky fella. He weighs probably  
about 240, somewhere along those lines.

Q. Okay. So all three were all good sized Marines.  
Correct?  
A. That's correct, sir.



- Q. The blows from (b)(6) and Sergeant (b)(6) during in-processing, you would consider forceful blows. Correct?
- A. Yes, sir.
- Q. On a scale from one to ten, somewhere between an eight and a nine?
- A. Yes, sir.
- Q. The kick from Sergeant Pittman that you described in the chest area, you described on a scale from one to ten, approximately a nine. Correct?
- A. Eight or a nine.
- Q. In your opinion, any of those blows could have caused the broken ribs. Correct?
- A. Yes, sir.
- Q. Um, this -- I don't want to jump around too much, but your grabbed the throat when he was already out in the rec yard, and (b)(6) lying down. Are you with me?
- A. Yes, sir.
- Q. Um, I believe Lieutenant Folk described when you were demonstrating right hand, but even though you were right-handed, during this grab, you used your left hand. Correct?
- A. That's correct, sir.
- Q. Um, you're taught as a correction's officer when you have contact with the prisoner or detainee, you use your offhand. Correct?
- A. Yes, sir.
- Q. So when (b)(6) was on the ground, and you reached down with your left hand, you had your fingers, which would be on the left side of (b)(6) when (b)(6) was on the ground. And you reached down with your left hand, you had your fingers which would be on the right side of (b)(6) throat. Correct?
- A. The lower aspect of it, sir.
- Q. And the thumb would have been on the left side of (b)(6) throat. Correct?
- A. Yes, sir.

Q. And again, you described at one point certain pressure points, but you don't deem that as a pressure point technique to get him to move or anything; is that correct?

A. I was trying to use it as a pressure point to get him to stand up. I wasn't trying to pick him up. I was trying to get his attention and let him know that he's got to stand, you know, he's going to stand.

Q. Okay. But at that point you actually squeezed -- as part of the pressure point, you actually squeezed around the Adam's apple; is that correct?

A. Yes, sir.

Q. Um, after he was nonresponsive to that, you went back and sat down in a chair or sat down somewhere. Correct?

A. Yes, sir.

Q. And --

A. He sat up. He was fine.

Q. But he didn't stand up, he immediately went back down the deck?

A. Well, I told him to sit up. I didn't tell him to stand, I just said sit up.

Q. But at some point, he went back down to the deck. Correct?

A. He laid back down, yes, sir.

Q. And you went over after doing this and you were sitting in a folding chair; is that right?

A. I was sitting -- I can't remember if it was a folding chair or just a lawn chair, something along those lines.

Q. But even at that point, you began to feel bad for the grab around his neck. Correct?

A. At some point, yes, sir.

Q. And we're talking about just shortly after grabbing his neck at that point, you had some feeling of, "I may hurt the guy"?

A. I felt -- well, I didn't feel that I hurt him, but I just felt that, you know, I felt that maybe my action was a little wrong.

Q. Okay. And at that point you offered him some water?

A. Yes, sir.

Q. And you attempted to talk to him?  
A. Yes -- well, I didn't attempt to talk to him. I offered him the water.

Q. At that point you had no indication that he had -- that you had injured his neck through that grab. Correct?  
A. Correct.

Q. It wasn't until some time later when the NCIS interview started that you wondered about those neck injuries from (b)(6)?  
A. That's correct.

Q. And the first thing that popped in your head -- well, not really the first thing, but something that popped in your head was, "Did I injure his neck when I grabbed him by the neck at that point. Right?  
A. That's right, sir.

Q. That when you talked to Doc (b)(6) about it?  
A. That's right.

Q. And you talked to Lieutenant Commander (b)(6) about it?  
A. That's correct.

Q. I believe you described on Lieutenant Folks examination, you described the in-processing of (b)(6). He opened his mouth, you said you think Doc (b)(6) might have forced his mouth open with his hand on his chin and a hand on his head?  
A. Yes, sir.

Q. You've seen (b)(6) statement for NCIS. Correct?  
A. Yes, sir.

Q. And you see how he describes -- hand to neck for a period of five to ten seconds to get him to open his mouth. Correct?  
A. That's what he said.

Q. Okay. What? You're saying that never took place?  
A. That never took place.

Q. The only time you've ever grabbed around the throat area was when he was lying flat on his back?  
A. That's correct.

Q. And that was on the morning of 4 June, shortly before your shift ended?

A. Yes, sir.

Q. So 5 June you never actually -- the shift of 5 June, it was relatively dark around that time frame?

A. Yes, sir.

Q. And you never had any close contact with (b)(6) because he was no longer looked to do the 50/10?

A. That's right, sir.

Q. And that's the last time you observed (b)(6) which you thought was alive 5 June, while he was just lying on the deck?

A. Yes, sir.

CC ((b)(6)) : That's all I have, sir.

IO: Mr. Higgins?

CC (MR. HIGGINS): May I have a quick recess so I could --

IO: Sure. It's 1030. We'll stand in recess until 1040.

*The Article 32 hearing recessed at 1029, on 2 February 2004.*

*The Article 32 hearing was called to order at 1037, on 2 February 2004.*

IO: Court will come to order. All parties who were present when the Court recessed are again present.

Accused and counsel are present. Mr. Higgins?

CC (MR. HIGGINS): No questions.

IO: Captain Francis, any redirect.

[END OF PAGE]

TC: Yes, sir.

REDIRECT EXAMINATION

Questions by the government:

Q. I want to make sure we are clear on the time line, the period of time which you grabbed (b)(6) by the neck area occurred roughly around 0700 on the 4th of June?

A. That's correct, sir.

Q. So roughly about 35, 36 hours prior to the time you saw him dead?

A. That's right, sir.

Q. Um, and you said you grabbed him around the Adam's apple. Correct?

A. Up in here. Right in here, sir. I squeezed it.

Q. So not the upper neck?

A. Pardon?

Q. Not the upper neck?

A. No, sir.

Q. Under the jaw?

A. Right in here.

Q. And after that, (b)(6) was demonstrating no difficulty in his neck or throat area?

A. No difficulty at all. Breathing, you know, non whatsoever. If he did, I didn't know anything about it, and nobody said anything about it. Apparently he spoke to the HET people.

Q. So this difficulty he was demonstrating was in his chest?

A. Yes, sir.

Q. Was he demonstrating in his chest and rib area prior to Sergeant Pittman's kick?

A. No, sir. Not that I noticed.

Q. All right. Now, at the time that you are taking (b)(6) from the holding building out to the holding pen in this arm bar, where is Sergeant Pittman?

A. He's got the other EPW's in the other holding pen. He was taking the other ones out here to this one here.

Q. Okay. So you're taking (b)(6) --

A. I took (b)(6) to this one.

Q. Okay. So why were they separated?

A. Because (b)(6) was -- he was somebody of importance, so basically, they wanted him separated away from everybody else so in case that he knew anybody or anything, there could be no conversations.

Q. Okay. Did you express your frustration with (b)(6) to Sergeant Pittman?

A. No.

Q. But you said you had made this comment to (b)(6) "Well, what about the children of the people from the 507, or words to that effect. Correct?

A. Yes, sir.

Q. Sergeant Pittman was within distance of you saying that that he could have heard that?

A. Oh, yes, sir. He was right there with me.

Q. Now, you mentioned that in your statements -- you had a statement that you didn't mention anything about the backhand by Sergeant Pittman on (b)(6) neither the kick by Sergeant Pittman on (b)(6) Why is that?

A. They never asked me, sir. (b)(6)

Q. Um --

IO: What statement is that? There are three statements. We're talking about the July 6th statement?

TC: Sir, talking about the typed written -- yes, sir, I think it was the 6th. Yes, sir, it was July 6th.

IO: Thank you.

*Questions by the government:*

- Q. Um, okay. What do you mean, they never asked?  
A. They didn't ask me what his role was in anything, they just basically -- their questions were about what I did. They were focussing and concentrating on what my role with him was.
- Q. But I mean, you certainly knew about the -- at that point, you were aware that (b)(6) could have been injured by that kick. Correct?  
A. Yes, sir.
- Q. Do you think that was an important piece of evidence that NCIS would have -- would have wanted to know?  
A. Sir, they didn't ask me. They asked me what my role was, and I told them I -- I asked for an attorney on numerous occasions, and they didn't get me what I asked for.
- Q. Were you and Sergeant Pittman friends at the time?  
A. Yes, sir.
- Q. You wouldn't want him to get into trouble. Right? Was that a motivation on your part for not telling everything that happened from that 0400 to 0800 period of time on the 4th of June?  
A. To a degree, sir.
- Q. What do you mean, "To a degree"?  
A. First of all, they didn't ask me. And then, I mean -- yes, Sergeant Pittman and I were friends so, you know, I didn't want to see anything else bad happen. So --
- Q. On the 5th of June, around time that you heard -- what time of day was it on the 5th of June that you heard (b)(6) had defecated himself?  
A. It was late in the afternoon, if I remember correctly, sir.
- Q. Was the sun still out?  
A. Yes, sir.
- Q. How hot was it that day? Can you recall?  
A. It was pretty hot. I would have to say upper 90's.

TC: That's all I have. Thank you.

IO: Lieutenant Folk, any re-cross?

DC: Yes, sir.

RECROSS-EXAMINATION

Questions by the military defense counsel (1stLt Folk):

Q. Drawing your attention back to that morning of the 4th, from the 4 to 8 shift, 0400, 0800, do you remember giving Sergeant Pittman two Advil that night?

A. Uh --

IO: I'm sorry. Two Advil?

DC: Two Advil, yes, sir.

WIT: No, I don't. I don't remember that, sir.

Questions by the military defense counsel (1stLt Folk):

Q. You don't remember him throwing those Advil up?  
A. On that night?

Q. Yes.

A. No, sir.

Q. What night do you remember that happening?

A. I can't remember the night, but I believe -- I remember Sergeant Pittman being sick, and I gave him some Advil, and I know for a fact -- I'm almost positive it wasn't that night.

Q. Do you think it was right around this time when (b)(6) came in that you did give him the Advil because he was sick?

A. No. I don't remember that, sir.

Q. Well, when do you think it was when you gave him these Advil because he was sick?

A. I think that was sooner in our time of being there. Probably about a month after we had already been there.



Q. Okay. So you don't think it was around the time (b)(6) was there, but you do distinctly remember giving --  
A. I do remember that. I do remember me giving Sergeant Pittman some Advil -- or some form of aspirin, and him regurgitating them back up because he was sick.

Q. Because he was suffering from the hebe geebies?  
A. That's correct.

Q. You don't believe it was when (b)(6) was there?  
A. Absolutely not.

Q. Where was Lance Corporal (b)(6) on that shift, on the 4th of June in the morning from 0400 to 0800?  
A. He was probably watching the other detainees because we had the two rooms.

Q. But they were all in the same building. Right?  
A. No, sir.

Q. Well, the (b)(6) and Mr. (b)(6) were all in the same building. Right?  
A. Yes, sir.

Q. But you don't remember where Lance Corporal (b)(6) was during the period of time where you were trying to get Mr. (b)(6) to stand up?  
A. He could have been watching the other detainees in the other room, sir.

Q. So you don't know where he was?  
A. I don't know, sir.

Q. You don't know where he was when this incident between (b)(6) and Sergeant Pittman allegedly took place?  
A. I don't know, sir.

Q. No idea?  
A. No, sir.

DC: I don't have any other questions.

IO: I have a few.

EXAMINATION BY THE INVESTIGATING OFFICER

Questions by the Investigating Officer:

Q. Lance Corporal (b)(6) do you recall when Major Paulus came on as the OIC?

A. Yes, sir.

Q. Did Major Paulus ever address the guards as a whole or on individual shifts about what he expected the guards to do, and how to conduct themselves?

A. Yes, sir.

Q. Do you recall what he said?

A. He said that he wasn't there to make people feel uncomfortable. He said he just wanted everybody to continue to work in there in the professional way that they had been performing, and he would implement some changes over a time period, which he did. And that was about it. Kind of like an inspirational kind of speech.

Q. What kind of changes did Major Paulus implement at Camp Whitehorse?

A. At the detention facility, sir, he, for the EPW's, he made sure they had tooth paste and a toothbrush because they weren't getting to brush their teeth. And he made sure that the Marines had their weapon with them at all time because a lot of the guys would like to lean their weapons up against the wall, and stuff like that. He had the saw removed from the holding pen, which I always felt that that should happen, but that was a good thing. He also -- he also made sure the EPW's had deodorant and he would walk around periodically showing up and see how everybody was doing. He was only the OIC for two weeks, a week and a half, sir.

Q. Okay. Did -- during the period of time where Major Paulus was the OIC, and you were present, either because your shift wasn't working or you just happened to be around for whatever reason, was there any conduct that occurred that was similar to what you just described earlier; that is, EPW's either getting kicked or punched or backhanded, throat squeezed, anything that you described with respect to (b)(6) did that occur to any other EPW that you are aware of?

A. In the presence of --

Q. In the presence of Major Paulus?

A. No, sir.

Q. Okay. Did Major Paulus ever address the guards at the detention facility at Camp Whitehorse about how the EPW's were supposed to be treated, meaning, I expect you to treat them humanely. I expect you to treat them well. I expect you to treat them like you would want to be treated, if you happened to be an EPW in Iraqi hands?

A. Yes, sir, he did.

Q. Could you relate the nature of those kinds of discussions or talks that Major Paulus had with the guards?

A. Basically, that came out in a little speech that he gave us that one day. Basically stating that, you know, we want these guys to be treated, you know, firmly but fairly, and that was about it, sir.

Q. Now, your estimation, did all the guards take that seriously, that admonition to be treated -- the EPW's were supposed to be treated firmly but fairly?

A. I'd have to say so, sir. I think the guys, you know, listened to Major Paulus, and they wanted do the best they could for him when he took over the reigns.

Q. Firmly, doesn't always necessarily mean you have to be harsh. You could be firm, but fair?

A. Yes, sir.

Q. If you see an EPW not complying with orders, did you take that to mean that if you were to apply some sort of force, that it had to be done in a fair manner?

A. Yes, sir.

- Q. Did anything that Major Paulus said or had done leave you with the impression that it was basically open season on the EPW's if they stepped out of line? You could pretty much do anything you wanted?
- A. No, sir.
- Q. He didn't instill that sort of attitude or atmosphere around the camp?
- A. Absolutely not. No, sir.
- Q. How about any of the other superiors in your chain of command, either Staff Sergeant (b)(6) or Staff Sergeant (b)(6) [ph], who was before him, did any of them indicate to you that despite what the CO is saying -- or the OIC, here's how I want you to treat these guys if they step out of line?
- A. Uh --
- Q. In other words, did they give you the impression that -- say, (b)(6) felt differently than Major Paulus about how the EPW's were to be treated?
- A. Being that Staff Sergeant (b)(6) is with us all the time, I think his opinion on the way they should have been treated was a little bit different from the other officers -- or the officers that were in charge of us because we were there all the time with them.
- The officers came in, they saw what was happening in the transition from them getting captured and then coming to us, and then they went out -- they had to go and do that their other duties they had to do. So Staff Sergeant (b)(6) stayed with us all the time, and he knew how they actually were or with what type of standing up, sitting down type-of-thing was actually going on. He knew the degree of force that was being utilized, and he authorized it, so --
- Q. Well, in your opinion, would you say that Staff Sergeant (b)(6) was allowing you and the other guards to perform in a way that would have been inconsistent with what Major Paulus would have allowed, had he been there and witnessed the same exact behavior?
- A. Yes, sir.

Q. So would you say that Staff Sergeant (b)(6) was not carrying out the intent of Major Paulus; that is, to treat them firmly but fairly, and he allowed you to go a little further?

A. To a degree, sir.

Q. So would you say then that Major Paulus had witnessed the same things that (b)(6) witnessed, that Major Paulus would have come away with a different view or would have exhibited -- or stepped in and stopped it, whereas, (b)(6) was allowing it to proceed?

A. I think Major Paulus would have had a different view on things, sir, you know, ultimately.

Q. A disapproving view?

A. Uh, it all depends on what the situation was, sir, at the time.

Q. Okay. Try to clarify your answer. Give an example --

A. The force being utilized possibly --

Q. Was more excessive than you think Major Paulus would have allowed?

A. It's possible.

Q. But Staff Sergeant (b)(6) was fine with it?

A. Yes, sir.

Q. Do you know if -- if you know what the answer is. I don't want you to speculate. Do you know if Staff Sergeant (b)(6) was briefing Major Paulus on what was occurring?

A. I don't know, sir.

Q. Now, you mentioned that you got a -- essentially a five-minute in brief from Staff Sergeant (b)(6) ph] [ph] when he was still around?

A. Yes, sir.

Q. About the SOP, if you will, and what your duties might be as a guard when you got assigned as a guard at Camp Whitehorse?

A. Yes, sir.

Q. But, basically you were left to rely on your own individual training as a civilian correction's officer in (b)(6)?

A. Yes, sir.

Q. And as I understand it, Sergeant Pittman is also a (b)(6)

A. Yes, sir.

Q. Is the training that you received similar to the training that Sergeant Pittman would have received when he became an correction's officer?

A. As far as I know, sir. I believe in (b)(6) everybody has to have the same type of training, but the (b)(6) they might have a little bit more than what we get, you know, mine is a county facility.

Q. And with respect to the training that you received, is it authorized to apply the type of force that you did, for example, when you got frustrated with (b)(6) and grabbed him by his throat, "You'll do what we tell you to do" -- or "what I tell you to do," and is that the sort of force that's permitted on civilian detainees and prisoners in the county jail in New York?

A. No, sir.

Q. Is there a system in place with respect to in the county jail, which you work, is there a system in place for dealing with prisoners who do not comply with commands and orders?

A. Yes, sir.

Q. There's a disciplinary procedure?

A. Yes, sir. I mean, we call a code, and then the guy, first of all we'd tell him to lock in. If he didn't want to lock in --

Q. Lock in meaning?

A. To go to his cell because the county jail is a little bit different than Iraqi prisoners --

Q. Sure. I couldn't agree with you more. I'm just trying to understand a little better what you meant by this. You said you had to rely on your own training?

A. Well, physical training, like, giving the guy a shot to the side of the legs and, you know, some type of pressure points and stuff like this, sir. Because if you got an unruly prisoner, you could give him shots to the leg to get him to move along --

Q. You talking about in the county jail?

A. Yes, sir.

- Q. And that's okay?  
A. That's fine, yes, sir.
- Q. And that's something that you were taught?  
A. Yes, sir. Arm locks, pressure points, these things were taught -- I mean, cuffing techniques, where -- I mean, we could actually cuff a guy between his legs. These type of techniques, I mean, they are used.
- Q. All right. Now, when you have to apply physical force in your county jail, is this in response to some sort of threat that's made toward another guard or an inmate in order -- in terms of defense, or is [inaudible] proof from here [inaudible] that something that you just apply if an inmate is not doing what he's told, when he's not moving through the chow line, or he's not goingg where he's told to go?  
A. If -- well, sir, there's -- if he's a threat to the staff, we can use force. If he's told to go some place and he's not goingg, and you're in control of him, you can make him go, you know. If he's cuffed or something like that and he's resisting you, you're taking him where he's got to go, and he don't want to go, you can give him shots to the legs and stuff like that. Even if -- let's say for example, an inmate was walking down the hallway and you stop him, and say, "Stop right there, I want to pat you down," you can pat him down, and if he's got something on him, you can take him down. If he's got contraband on him or what have you, sir.
- Q. All right. What I'm trying to understand then, in a situation where a correction's officer feels threatened or another staff member is being physically threaten -- for example, say you had an inmate grab you by the wrist like (b)(6) grabbed you by the wrist. That would be a justification to apply some physical force to that inmate to one, get him to release his grip, and two, to subdue him if necessary?  
A. Absolutely, sir.
- Q. All right.  
A. And then mace would be dispensed and, you know, all these nonlethal uses of force that we, as officers would be able to utilize.

Q. Okay. So putting aside those scenarios where defense may be an issue because of the actions of an inmate, if an inmate is simply just not -- just one of those types of inmates that is not going to listen when he's told to do something, he's not being physically threatening to anyone, but he's just being hard headed, he's not going to listen, he's going where he's told to go, he's not doing what he's told to do, on those occasions you can apply some physical force to get him to move along and go where he's got to go and do what he's got to do?

A. Yes, sir.

Q. As you described, either punches or kicks to the meaty portions of the arms or legs?

A. Well, we try to use -- if they got to make, so they would just spray them first.

Q. All right. But you didn't -- were you authorized riot control agents in the detention facility?

A. In Iraq.

Q. Yes.

A. No, sir.

Q. Okay. So you didn't have that prior authorization to use that?

A. That's right, sir.

Q. So you didn't have that available to you?

A. That's correct, sir.

Q. So you had to use something else, and that would be --

A. Physical force, sir.

Q. The blows to the arms or legs if necessary?

A. Yes, sir.

Q. To get them to do something?

A. That's correct, sir.

Q. And that's the kind of training you had as a correction's officer before you even got into Iraq?

A. Yes, sir.

Q. Something that was condoned by at least the State of

A. (b)(6)  
Yes, sir.



Q. So you have that mind set goingg for you?  
A. Yes, sir.

Q. And in your opinion, do you think Sergeant Pittman has a similar sort of mind set?  
A. Yes, sir.

Q. Did Sergeant Pittman, if you know, have any more of an in brief than the five minutes that you got from Staff Sergeant (b)(6) [ph] [ph] [ph]?  
A. As far as I know, sir, no.

Q. Did you get it at the same time?  
A. No, sir.

Q. Okay --  
A. Excuse me, sir. The in brief with Staff Sergeant (b)(6) [ph] [ph] [ph]?  
Q. (b)(6) [ph] [ph] [ph]?  
A. Yes, sir.

Q. You were both together?  
A. Yes, sir.

Q. And that was the extent of the briefing on your duties and what's expected of you?  
A. Yes, sir.

Q. And if so, as far as you know, in your opinion, was Sergeant Pittman relying on his training and experience as a correction's officer with the federal government to supplement or augment the five minute in brief of what was expected of him on running an EPW camp?  
A. Yes, sir.

Q. And as far as you know, his training was similar to your training?  
A. Yes, sir.

Q. In many respects at least?  
A. Yes, sir.

Q. Now, would it ever be authorized or condoned in your civilian setting as a correction's guard just to haul off and smack somebody, an inmate, for no reason at all?  
A. No, sir.

- Q. Now, the kick that you observed, at least the tail end of that was described, like a karate kick, I'll describe it, to the chest, you saw the tail end of that?
- A. Yes, sir.
- Q. You didn't see -- if I understood you correctly, you didn't see what (b)(6) had done prior to that -- I guess, the seconds prior to that kick?
- A. No, sir.
- Q. But if I understood your testimony correctly, you didn't see any significance, and I think that's what you said, "significant action" by (b)(6) prior to the kick, at least out of the corner of your eye or anywhere else?
- A. I don't know if he stepped toward Sergeant Pittman or -- I don't know what he did, sir. He might have provoked him one way or another.
- Q. That would have caused some sort of defensive move by Sergeant Pittman, you don't know if (b)(6) did something like that that would have justified defensive move by Sergeant Pittman?
- A. I don't know, sir.
- Q. In your opinion, were -- for lack of a better term, sort of an understanding or feeling among the guards that this EPW's were -- regard less of their status, whether they were soldiers in the Iraqi army that got captured or whether they were common criminals or whatever the status was at the detention facility, put all that aside, was there a feeling or an understanding among the guards at Camp Whitehorse at the detention facility that the EPW's, they are Iraqis and they are really not entitled to all these protections that the Geneva Convention affords people in that position? Was there that feeling, that, well, they are second class citizens or less than humans, we can do whatever we want with them at any time?
- A. No, sir. I don't think that this guy, they were working there though that at any time. It's that, they didn't know what they were entitled to. We didn't have a book, or any reference to go on. No Geneva Convention or anything like that. You know, we didn't know what they were supposed to get or weren't supposed to get or how they were to be treated or not treated, and we didn't know these things.

Q. Would basic common sense and just human compassion tell you that you wouldn't just go off and smack them for no reason. Right?

A. Yeah --

Q. You've got that at one extreme where you are just goingg to go off and hit them for no reason at all, just because of who they are and what position that are in, that wouldn't be allowed. Right?

A. No, sir.

Q. Did you see anybody just doing that. Just hauling off and cold cocking, and EPW for no reason at all?

A. No, sir.

Q. So you never saw that?

A. Well --

Q. Did you hear about it?

A. I mean, I, you know, there was a time or two where somebody might have hit somebody.

Q. For no reason?

A. It's possible, sir.

Q. I'm not asking you to speculate -- I mean, anything's possible in this world, but did you ever see it yourself?

A. When an EPW got hit?

Q. For no reason at all. Just standing there, let's say he's hooded and he's cuffed, he's standing like he's supposed to be standing and somebody just hauls off and smacks him because you can, did you ever see anything like that?

A. Yes, sir.

Q. By whom?

A. Myself, Sergeant Pittman, Sergeant (b)(6)

Q. On (b)(6) the (b)(6) or somebody else?

A. (b)(6)

Q. Okay. And that was not for no god reason -- I mean, let's try to eliminate things. Was the (b)(6) doing something that caused you to believe that either your life or the life of Pittman, (b)(6), or anyone else may have been in danger?

A. No, sir.

Q. Was he not complying -- was he complying with commands?

A. To a degree, yes, sir.

Q. So whenever you witnessed this conduct where he was hit, you just mentioned, he haven't done anything or said anything that would have warranted either you hitting him or Sergeant Pittman or anyone else?

A. That's right, sir.

Q. What did you do -- what did Sergeant Pittman do and what did (b)(6) do?

A. We brought him into a cell area where we had him in that area, and we had to administer some blows to the legs and to the arms.

Q. You say you had to do that, that implies to me that there was some reason for doing it, was there a reason?

A. Because the (b)(6) people had put up a fight when they went to get him.

Q. So basically you felt you had to do it as a matter of retribution, sort of like getting even?

A. Yes, sir.

Q. He hadn't done anything at that point himself in your presence that justified these strikes to him?

A. That's right, sir.

Q. And you did that. Correct?

A. Yes, sir.

Q. And Sergeant Pittman participated in that?

A. Yes, sir.

Q. And Sergeant (b)(6)?

A. Yes, sir.

Q. Anyone else?

A. That was it, sir.

Q. Was anyone else around to witness this?  
A. No, sir.

Q. Okay. Did you see anything like this occur with any other prisoner?  
A. No, sir.

Q. Is this was the only occasion?  
A. Yes, sir.

Q. Now, if Major Paulus had witnessed that kind of conduct, what do you think his reaction would have been?  
A. I don't think he would have cared for it.

Q. Do you think he would have taken some action against you and Sergeant Pittman, and Sergeant (b)(6)?  
A. It's possible, sir.

Q. He certainly wouldn't have condoned it based on what you understood his intent to be with the running of that EPW camp?  
A. That's correct, sir.

Q. How about Staff Sergeant (b)(6), what would you think his reaction would have been had he witnessed what you just described with the (b)(6)?  
A. I don't know, sir.

Q. Well, based on how he had been running things up until that point, the camp how you've -- trying to think what the boss may have liked -- may liked or not like, what do you think his reaction would have been? Do you think he would have taken you aside and said, "hey --"  
A. I don't think he would have mind, sir.

Q. You think it would have been okay with (b)(6)?  
A. Yes, sir.

Q. All right. But certainly not Major Paulus?  
A. No, sir.

Q. And your immediate supervisor at the time, was it Sergeant Pittman?  
A. Yes, sir.

Q. And then next in line would be Staff Sergeant (b)(6) ?

A. Well, Staff Sergeant (b)(6) was the overall boss of that place, and then it was -- who wasn't there at that point, so Sergeant Pittman was next, and then would have been Sergeant (b)(6), and so on down the chain.

Q. Okay. All right. But other than that one experience with the (b)(6) where you just described some indiscriminate hitting for no reason at all, other than just pure retribution, did you, did you hear of any other similar incidences with any other EPW?

A. Not that I know of, sir.

Q. And that was not the atmosphere, would you say, among the guards, where the mind set of the guards -- let me rephrase that to make it a positive. Would you say that the mind set of the guards at Camp Whitehorse was to treat these EPW's in a fair manner?

A. Yes, sir.

Q. A humane manner?

A. Yes, sir.

Q. But there was this one isolated incidence with the Sheik that went beyond that?

A. Yes, sir.

IO: I don't think I have any other questions at this time. I guess I may have generated some questions. Lieutenant Folk? Captain Francis?

TC: You've asked all the questions. I don't -- I don't have any questions.

IO: All right. Lieutenant Folk?

#### RECROSS-EXAMINATION

Questions by the military defense counsel (1stLt Folk):

Q. When did this incident with the Sheik take place?

A. That was the 5th.

Q. What time on the 5th?

A. I'm not really sure, sir.

Q. Was it the morning? Afternoon?  
A. It was the afternoon, late afternoon.

Q. And it was you and Sergeant Pittman only along with the Sheik?  
A. When we brought him into the room, Sergeant (b)(6) was also there.

Q. What room did you bring him in to?  
A. This room here.

Q. To the holding building room?  
A. Yes, sir.

Q. And that's where these hits took place, was in that holding building room?  
A. Yes, sir.

Q. You sure?

IO: Well --

DC: You want me to note for the record, sir?

IO: Yeah.

DC: Lance Corporal (b)(6) indicated that the Sheik was hit by Sergeant Pittman and Lance Corporal (b)(6) in the furthest south holding building, which is labeled "Holding Building" on the diagram.

*Questions by the military defense counsel (1stLt Folk):*

Q. So it was you and Sergeant Pittman, and Sergeant (b)(6) and the (b)(6) in that furthest out holding building room?  
A. Yes, sir.

Q. And that's where these hits took place?  
A. Yes, sir.

Q. And this was going on at the same time that you found out that (b)(6) had defecated on himself?  
A. No. At that time there, (b)(6) was -- is this supposed to be the restrooms?

Q. That's the HET building?  
A. The HET building, okay. He was over here.

Q. (b)(6) was in the HET building?  
A. He was in the HET building when we heard that he had defecated on himself.

Q. Okay. But you were with the (b)(6) in this holding building on the afternoon of the 5th. Right?  
A. That's right.

Q. And that's where these unprovoked hits took place on the (b)(6) Right?  
A. Over here.

Q. In the holding building?  
A. Yes, sir.

Q. Same one we've been talking about that whole time?  
A. Yes, sir.

Q. And that whole time, it was just you, Sergeant Pittman, and Sergeant (b)(6) and this (b)(6)?  
A. That's correct, sir.

Q. Nobody else was present?  
A. Nobody I could remember, sir.

Q. Where was -- how did the (b)(6) get to that holding building room?  
A. Um, myself and Sergeant Pittman walked him in there.

Q. Where did he come from?  
A. He came from over here.

Q. So you took him from the HET building into the holding building?  
A. No. We stripped him first.

Q. You stripped him in the HET building?  
A. Stripped him over here.

Q. So you conducted a normal in-processing strip search?  
A. Correct.

Q. Who dropped the (b)(6) off?  
A. I don't even know, sir. I wasn't there for that.

Q. And what was goingg on when the Sheik arrived? Were you there for that?  
A. What was goingg on when the Sheik arrived?



Q. Yeah. Were there for that?  
A. No. I was getting the mail.

Q. Well, describe what you saw when you returned to the detention facility at Camp Whitehorse?  
A. When I came back I came back, Sergeant Pittman was over there with the Sheik. I was told --

Q. Over where with the Sheik?  
A. Over here where the HET Team would do their interviews. They had cleaned this all out and put a rack in there for the Sheik. The Sheik was supposed to have given up peacefully, and these accommodations were made for him. We knew he was coming, like, a couple of days prior to him arriving.

Q. So you already knew two days in advance that this Sheik was in route?  
A. We knew he was coming. We didn't know when he was coming, but we knew he was coming.

Q. So when you first got to Camp Whitehorse, you went down to the HET building, which is where the Sheik was located?  
A. When I got back from the mail run.

Q. What was going on at the detention facility when you got back from the mail run? Describe what you saw?  
A. When I got back, I just came back into the troop building. The guys were in there opening up their mail.

Q. Nothing out of the ordinary?  
A. Nothing out of the ordinary. And then, I walked over, I came out of there because somebody said, "Hey, you've got to go over there with Sergeant Pittman," so I walked over and I got with Sergeant Pittman, and the Sheik was there. And I think there was two guys from another company that were there that were leaving because they didn't need them no more because this guy was now going to be put in the EPW holding area where we were.

Q. So you took the Sheik from the HET building up to those in-processing pens. Right?  
A. To the wall, where they do the strip search.

Q. Then you strip searched them with Sergeant Pittman. Right?  
A. That's right.

Q. Who else was there during the strip search?  
A. I can't remember, sir.

Q. Do you remember if Staff Sergeant (b)(6) was there?  
A. I can't remember. He might have been, sir.

Q. Do you remember if Major Paulus was there?  
A. I can't remember everybody that was there, sir.

Q. And then, just you and Sergeant Pittman took this (b)(6) into that holding building, the southern most building on the diagram?  
A. Yes, sir.

Q. Nobody else was in that room?  
A. No, sir. Not that I can remember. That room was empty. I believe, that's where (b)(6) was at one point.

Q. And this was the afternoon of 5 June?  
A. Yes, sir.

Q. Do you remember if it was still light out?  
A. Yes, sir, because after this incident happened, that's when we got word that the (b)(6) people were coming to get him.

Q. And it was in this room that you struck the (b)(6)?  
A. Yes, sir.

Q. How did you hit him?  
A. I hit him in the thighs.

Q. How many times?  
A. Quite a few times.

Q. Did he say anything?  
A. He didn't say anything.

Q. Nobody else saw this at all?  
A. As far as I know, no, sir.

Q. The (b)(6) was pretty much, the most high profile visitor that you received at the camp. Right?  
A. He was the only person that was going to receive the treatment that he was supposed to get. That's for sure, sir.

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Q. And sergeant Pittman hit the Sheik at this time too?  
A. Yes, sir.

Q. What happened after he was in that holding building?  
A. What do you mean, sir?

Q. Where did he go next? Did he just stay in there the whole night?  
A. The Sheik?

Q. Yeah.  
A. As far as I know, sure.

Q. So he stayed in that room overnight where -- this southern most holding building?  
A. Yes, sir, as far as I know. I'm not really sure --

Q. What did you do next?  
A. I left. As far as -- after that incident transpired, we got word that the (b)(6) people were coming down from wherever it was that they captured him, and the whole camp was put on alert, and Marines started getting onto the birms because we were expecting an attack and, you know, my duty was to guard the front of the troop area, where we lived. So everybody geared up, put on all their gear, Kevlars, flak jackets, and helmets, weapons and got on the birm.

Q. This incident with the Sheik took place before all that happened?  
A. Yes, sir.

Q. Do you know where (b)(6) was at this time?  
A. I don't know where (b)(6) was at that time, sir.

Q. You never saw him?  
A. I don't remember seeing him.

Q. You didn't talk to any other Marines during the time you took (b)(6) from the HET building to the southern most holding building?  
A. (b)(6)

Q. I'm sorry. You didn't talk to anybody except Sergeant Pittman when you took the (b)(6) from the HET building to the southern most holding building?  
A. Not that I can remember, sir.

Q. Didn't have a translator with you and Sergeant Pittman and the (b)(6)

A. No, sir.

Q. Sergeant (b)(6) wasn't there?

A. Not that I can remember, sir.

Q. So how long were you and Sergeant Pittman in that holding building with the (b)(6) for?

ACC: Probably 20 minutes, maybe half an hour.

Q. Then after you left, you went and stood on the birm, an it's your testimony that the (b)(6) stayed in that room the rest of the night?

A. Yes, sir -- well, I'm not sure where the (b)(6) stayed for the rest of the night, sir. I didn't work the rest of that night.

Q. But your understanding is that he stayed there all night?

A. As far as I know, he was -- that's where he was, then I went to the front -- my post was supposed to be in the front.

Q. Who were you reporting to during that incident on the birm?

A. Staff Sergeant (b)(6)

Q. And this whole period of time with the (b)(6) it was just you and Sergeant Pittman and no other Marines around?

A. Sergeant (b)(6)

Q. Sergeant (b)(6) followed you and Sergeant Pittman from the HET Team compound all the way up to the holding building?

A. I don't know if he was working at that time, or where he was, but he wound up in there.

Q. Was he in the HET building with you and Sergeant Pittman?

A. No.

Q. Was he in the in-processing area with you and Sergeant Pittman?

A. I don't remember, sir.

Q. You just remember that he was in the holding building with you and Sergeant Pittman?  
A. He was in the building with us.

Q. In there the whole time with you?  
A. Yes, sir.

Q. Describe what was in that holding building area when you were out there with the Sheik?  
A. What was in there?

Q. Yeah. What was in there?  
A. Uh, debris from the garbage from the Iraqis, if I can recall correctly. I can't really remember everything. I just know that they had the rack in the back where they utilized the rack as a outhouse type-of-thing with the box under beneath it. They have bottles where they would pee in, and get concertina wire around it, and that's about it, sir, that's all that was in there.

Q. Do you know where the rest of the detainees were at this time?  
A. As far as I know, I think they were all put into the adjacent building.

Q. So how did you decide to leave that holding building where the Sheik was located, what happened?  
A. How did I decide to leave?

Q. Yeah. What led to you leaving?  
A. I just left.

Q. Nobody came and told you to leave?  
A. When we got -- when we have them in here?

Q. Yeah?  
A. I just left.

Q. And just left the Sheik behind to stay there alone?  
A. Left him there to stand somebody had to take over.

Q. You don't remember who?  
A. No, sir.

Q. Do you remember if somebody did take over?  
A. Somebody had to have.

Q. Do you remember if somebody did?  
A. I can't remember, sir, to be honest with you. Maybe Sergeant (b)(6) was on that post at that time, I can't remember, sir.

Q. Did the (b)(6) say anything to you during this 20 to 30 minutes you're in that holding building with him?  
A. He didn't say anything.

Q. What was he wearing?  
A. The (b)(6)

Q. Yeah, (b)(6) what was he wearing?  
A. He was wearing the same type of gown as everybody else, all the other Iraqis.

Q. And you don't recall anybody there at the in-processing pen, besides you and Sergeant Pittman while you were strip searching the Sheik?  
A. I can't remember, sir.

Q. Did you ever tell anyone else about this incident with (b)(6) besides the investigating officer here today?  
A. What do you mean, sir.

Q. Did you ever tell any of the other Marines about this 20 to 30 minutes where you repeatedly hit the (b)(6)?  
A. No. We didn't hit him for 20 to 30 minutes.

Q. All right. Well, did you tell anybody else about this 20 to 30 minutes during which you hit the (b)(6)?  
A. We were in a room with him over here for about 20 or 30 minutes. We took him here, it was only for a few minutes that he was hit -- did we ever discuss it with anybody else? I discussed it with my attorney. That's about it.

Q. Back up for one second. It's your testimony that you were only in that holding building with the Sheik for two to three minutes -- or a few minutes?  
A. This building here, yes, sir.

Q. And that's where the hitting took place?  
A. That's correct.

Q. Okay. But you were in the other building with him for 20 to 30 minutes?  
A. About 20 to 30 minutes, Yes, sir.

Q. Do you remember if (b)(6) was standing or sitting when you hit him?  
A. When we hit him?

Q. When you hit him, yeah?  
A. He was standing over here in this building he was sitting.

Q. So all these hits were administered up in holding building?  
A. That's correct, sir.

Q. And you don't know how (b)(6) arrived?  
A. I was not there when (b)(6) came.

Q. And you don't remember any other contact with any other Marines besides Sergeant Pittman and Sergeant (b)(6) during this period of time with the Sheik?  
A. No, sir.

DC: I don't have any further questions, sir.

IO: Any other questions? Captain Francis, do you have questions?

TC: Yes, sir.

IO: Before we get to (b)(6)

CC ((b)(6)): No, sir.

IO: Mr. Higgins?

CC (MR. HIGGINS): No.

IO: Captain Francis?

TC: Yes, sir.

REDIRECT EXAMINATION

Questions by the government:

Q. Um, how did you see Sergeant Pittman strike the Sheik?  
A. With his knees.

Q. In what portion of (b)(6) body?  
A. To his outside thigh, sir.

Q. Okay. What kind of force are we talking about?  
A. I guess a moderate to strong amount of force.

Q. And what was the purpose of these strikes?  
A. To, like, the colonel was saying, more or less like a retribution type thing. We wanted to make him know that he was basically in our house, and, you know, this was the way, you know --

Q. Okay.  
A. -- he was goingg to do what was told of him.

Q. And you did the same thing?  
A. Yes, sir.

Q. How about Sergeant (b)(6)  
A. I don't know where Sergeant (b)(6) hit him off the top of my head, sir.

Q. Okay. Um, do you recall if the blows with the hand, knee or foot, was with Sergeant (b)(6)  
A. I can't recall, sir. I mean, somebody might have hit him with their hand.

TC: All right. That's all the questions I have, sir.

IO: Any other questions in light of Captain Francis's in way of cross?

DC: No, sir.

ACC (LCPL (b)(6)) No, sir.

CC (MR. HIGGINS): No, sir.

IO: I have no other questions.  
Is the witness subject to recall in this 32?

TC: No, sir.

CC (b)(6) No, sir.

CC (MR. HIGGINS): No, sir.



IO: All right. Lance corporal (b)(6) your testimony is concluded. I advise you not to discuss your testimony with anyone other than the attorneys in this case. Of course you are represented, so follow the advise of your counsel. I also advise you that -- I'm sure that counsel has also advised you not to discuss this case with the media should they come knocking at your door wanting to talk to you about what you know.

WIT: Yes, sir.

IO: Okay. Thank you. You're excused.

WIT: Yes, sir.

*The witness withdrew from the courtroom.*

any further, which of course is his prerogative and right, and we'll honor that. Right? He came in here during the recess and indicated that was his desire, and we excused him from any further testimony in this case.

So Captain Francis, would you like to call your next witness?

TC: Yes, sir. The government would like to call Corporal Antoine to the stand.

Corporal (b)(6) U. S. Marine Corps, was called as a witness by the government, was sworn, and testified as follows:

*DIRECT EXAMINATION*

*Questions by the government:*

Q. Please state your full name and spell your last name.

A. (b)(6)

Q. You're currently a corporal in the United States Marine Corps?

A. Yes, sir.

Q. And your current unit please.

A. 2d Battalion, 25th Marines.

Q. Are you active duty or are you a reservist?

A. I'm a reservist.

Q. But you're currently on active duty?

A. Yes, sir.

Q. Were you involved in Operation Iraqi Freedom?

A. Yes, sir.

Q. During that time, were you ever stationed at Camp Whitehorse in Iraq?

A. Yes, sir.

Q. Um, when was that?

A. It was some time in April.

Q. Okay. Until when? Do you recall?

A. I -- I think -- I don't know until when. I can't remember the exact date.

Q. Okay. Was it after June 2003?

A. I would say so.

Q. Okay. During that time, were you assigned to the detention facility, EPW detention facility?

A. Yes, sir.

Q. What was your job there?

A. A guard.

Q. Okay. When you say you were a guard, what do you mean?

A. Basically, guard the EPW's, that's it.

Q. Okay. Now, during that time, what was the typical process for processing an EPW into the camp?

A. Uh --

Q. Or detainee?

A. I never did the processing, so I can't really say what the typical process was. All I did was guard them, and that's it.

Q. Okay. When you say you guarded them, I guess, what phase during a detainee's stay would you be guarding them?

A. After they came in, after they did the in-process and they came into the facility, that was my job to guard them right there. That's it.

Q. Okay. Were you familiar -- now I want you to follow -- okay. Let me back up a minute. At some point during the time you were at the detention facility, there was a changeover of OIC's?

A. Yes, sir.

Q. One time it was Major (b)(6) and then it became Major Paulus. Correct?

A. Yes, sir.

Q. I just want to talk about the time Major Paulus was the OIC. Okay?

A. Yes, sir.

Q. During that time he was OIC, was there a process called -- or a process known as 50/10 -- or a process where prisoners were required to stand up for maybe 50 minutes, 45 minutes at a time, then allow them to sit for a period of time over extended period of an hour to try to wear them down for the HET Teams?

A. Um, the 50/10 was in place when we first got there and kept that going the whole time.

Q. Okay. So it was still going when Major Paulus was the OIC?

A. Yes, sir.

Q. How typically would members that -- from your -- from your observations, how typical would members of your crew enforce it's rule on the detainees?

A. On my crew? See we would try to get them to stand. We would have people that wouldn't stand so we would let them sit.

Q. Would you ever try to yell at them to get them to stand?

A. Correct. Yes, sir.

Q. Okay. And you would maybe hit walls or hit doors?

A. Correct.

Q. And threaten them. Correct?

A. Threaten them, like, we hit the doors trying to scare them, and that's it.

Q. To try to get them up. Right?

A. Yes, sir.

Q. Now, did you ever lay a hand on them, that you can recall?

A. No.

Q. Did you -- did any person of your crew ever -- from your observations, kick or hit an EPW during this 50/10 technique while Major Paulus was the OIC that you observed?

A. No, sir.

Q. I want to then focus you to a very specific period of time between 3 June 2003, and 6 June 2003. Okay?

A. Okay.

Q. On 3 June 2003, did you have any EPW's of any significance arrive at the camp?  
A. The dates, I'm not sure about this dates, sir, but I don't know.

Q. Okay. Hold on just one second. Do you recall giving a statement to Staff Sergeant (b)(6)?  
A. Yes, sir.

Q. Do you think if you could review that, that might refresh your recollection as to the date?  
A. Yes, sir.

Q. Would you like to do that?  
A. Sure.

*The witness perused the document.*

Q. Does that help refresh your recollection?  
A. Yes, sir.

Q. Okay. On -- well, let me just ask you this. June 3, 2003, what are you doing on that day?  
A. Watching the EPW's.

Q. Were you involved at all in the in-processing of any of the EPW's into the facility on that day?  
A. No, sir.

Q. Okay. The next day, June 4, 2003, did you guard a prisoner by the name of (b)(6)?  
A. From 4 in the morning -- from 0400 in the morning to 0800, yes, sir.

Q. Okay. And also did you guard two individuals known as the (b)(6)?  
A. Yes, sir.

Q. All right. When you were guarding these individuals, who was on your team, your guard team?  
A. It's myself, Lance Corporal (b)(6) and Lance Corporal (b)(6).

IO: Lance Corporal who?

WIT: (b)(6)

IO: (b)(6)

WIT: Yes, sir.

*Questions by the government:*

Q. Um, now, during that period of time from 0400 to 0800, what are you -- are you performing this 50/10 technique with (b)(6) and the (b)(6)

A. No. Sir, 0400 to 0800, that was the second day. They were asleep.

Q. Okay. Um, you remember being interviewed by NCIS?

A. Yes, sir.

Q. Okay. NCIS agents -- you and I talked about a month ago. Correct?

A. Yes, sir.

Q. And during that time, I showed you a record, results of an interview from that interview you had with NCIS?

A. Yes, sir.

Q. Do you think if you reviewed that document, that might help refresh your recollection?

A. Refresh my recollection with --

Q. Well, let me ask you this, can you remember the specifics about -- between what happened in that time frame on 4 June with (b)(6)

A. He came in at 12 -- well, my shift started at 12:00 to 0400. The first night he came in and the two (b)(6) were standing and he was sitting in the back. That is the only time -- that is the first time I saw him until 4:00 in the morning 0400 to 0800. When I saw him then they were asleep.

Q. Okay. I'm sorry. I think I was getting my time frames messed up.

IO: I'm confused.

TC: Yes, sir. I'm confused myself. I'm sorry.

*Questions by the government:*

Q. So you were on duty guarding him from midnight to 0400?

A. To 0400.

IO: On what day?

TC: On 4 June.

WIT: On the first time he came in, I don't know the first time he came in.

IO: Well, let me ask you this, Corporal (b)(6) the evidence prior to your testimony here today indicated that (b)(6) and the (b)(6) were captured on June 3rd. Let's assume that that's true. I don't know if it is or not but, that is what the record seems to indicate. June the 3rd in the late afternoon, early afternoon hours on June the 3rd. Now -- and then he was brought to Camp Whitehorse. Did you have to duty at midnight on that night?

WIT: Yes, sir.

IO: So basically, that's actually June the 4th, from midnight to 4:00 a.m.

WIT: Yes, sir.

IO: Okay. Okay.

*Questions by the government:*

Q. Okay. All right. Sorry. So during that shift, were you required to perform this 50/10 technique on (b)(6) and the (b)(6)?

A. Yes, sir.

Q. Okay. Please describe (b)(6) level of cooperation with his technique?

A. Stubborn. He wasn't listening at all.

Q. Okay. Now, at this time, he had a sandbag on his head?

A. Can't remember that, sir.

Q. Can you remember if he had flexycuffs on the wrists?

A. Can't remember.

Q. Okay. Now, when -- what do you mean by he was being stubborn?

A. He wasn't listening, just -- he was basically ignoring us.

Q. So you tell him to stand up?

A. Correct.

Q. And he wouldn't?  
A. He wouldn't stand up.

Q. Okay. And what were you -- what kind of mechanisms were you using to try to get him to stand up?  
A. Picking him up by his underarms, but he didn't -- he'd go right back down.

Q. Then -- were the (b)(6) doing this 50/10?  
A. Yeah, they were standing.

Q. Okay. So it was only (b)(6) that wasn't cooperating?  
A. Correct.

Q. At some point -- I guess, when you realized (b)(6) wasn't cooperating, what did you do?  
A. I left him alone, and I told the two (b)(6) to go ahead and sit down.

Q. So (b)(6) wasn't cooperating, so your resolution was, "I will just let the (b)(6) sit as well"?  
A. Correct.

Q. Um, you didn't punch or kick or hit (b)(6) at all?  
A. No, sir.

Q. Did you punch, kick, or hit the (b)(6) at all?  
A. No, sir.

Q. Did any of your crew do that?  
A. No, sir.

Q. When (b)(6) -- when you observed (b)(6) during that period of time, how did he appear physically? I mean, did he appear healthy or sick or could you tell?  
A. It was dark and I couldn't tell.

Q. Okay. Did he -- was he exhibiting anything that would indicate that he was in pain or not?  
A. No, sir.

Q. Was he actually sitting up or laying down?  
A. He was sitting up.



Q. Okay. Now, following -- all right. Let's back up just a minute. Prior to you taking over that shift at midnight, had you been told what the potential of significance of (b)(6) was?

A. I didn't even know he was coming.

Q. Okay. But I mean, when you took over that shift, were you told anything about that he might be linked to the 507th Maintenance Battalion ambush?

A. I think I was, I'm not sure.

Q. Okay. Now, um, okay. After -- who relieved you of your shift at 0400?

A. That I can't remember.

Q. All right. Do you think if you read that results of interview, that might refresh your recollection?

A. I think -- I said that in my statement too, that I couldn't remember who took over my shift afterwards.

Q. Are you sure about that, or would you like to review that results of interview?

A. I'll review it.

CC (MR. HIGGINS): Sir, I assume he's refreshed his recollection from an agent's statement, not his own statement?

TC: He can refresh recollection at any --

IO: Hold on.

CC (MR. HIGGINS): My fear is that he's going to be -- he's not going to be testifying as far as -- tell the investigating officer what his recollection was, but based on what some agent wrote from some time ago, now, if there's an indication -- I understand his recollection is to be refreshed from other sources, but I don't think he's established -- an indication at this point, yes, that that would necessarily refresh his recollection in this particular source.

IO: Okay. I understand your objection. You may try to refresh his recollection with that document.

TC: I may, sir?

IO: You may. Yes, sir.

Questions by the government:

Q. I want to direct your attention to the second paragraph here of Page 2. Just read that paragraph and look up at me when you're done.

The witness perused the document.

Q. Did that help refresh your recollection?

A. Um, that's what the paper says, but right now, I can't even remember if that's who relieved me.

Q. Okay. All right. But you do recall that you were on duty from zero -- midnight to 0400?

A. Correct.

Q. Okay. And during that time, (b)(6) wasn't cooperating with 50/10?

A. Correct.

Q. But your resolution was to just let him sit down with the rest of the individuals?

A. Yes, sir.

Q. Okay.

TC: All right. That's all I have.

IO: Any cross, Captain Studenka?

DC: Just briefly, sir.

CROSS-EXAMINATION

Questions by the military defense counsel (Capt Studenka):

Q. Corporal (b)(6) that oncoming shift, you said it was about 0400 in the morning of the 4th. Do you have recollection of whether or not Lance Corporal (b)(6) was a part of that shift?

A. I'm not sure, sir.

Q. If Lance Corporal (b)(6) stated that he was a part of that shift, would you disagree with him?  
A. Um --

Q. Would you have any reason to doubt Lance Corporal (b)(6) if he said, "I was part of that shift that relieved Corporal (b)(6)"  
A. No, sir.

Q. Okay. (b)(6) was not performing the 50/10, you interpreted it as him being stubborn. Correct?  
A. Yes, sir.

Q. And you relayed that -- your opinion of him being stubborn to Lance Corporal (b)(6), and the following shift -- or whoever took over that following shift?  
A. Yes, sir.

Q. Both the (b)(6) were doing the 50/10 when you would announce "Goom" [ph] or sit up, they would get up. Correct?  
A. Yes, sir.

Q. (b)(6) was not responsive to your verbal commands. Correct?  
A. Correct.

Q. And at that point, he was essentially nonresponsive to your physical assistance?  
A. Correct.

Q. The next time you saw (b)(6) was some time on the 5th; is that correct?  
A. The dates, I'm not sure of, but it was the -- it was 0400 to 0800.

Q. That following day?  
A. Yes, sir.

Q. Um, at this point -- I think we touched on direct that the prisoner's, the two (b)(6) and (b)(6) appeared to be sleeping. Correct?  
A. Right.

Q. But at some point during the shift, you announced somehow that you had food and water for the prisoners. Correct?  
A. Correct.

Q. And all three were at some point awakened?  
A. Yes, sir.

Q. The two (b)(6) got up and took their food and water.  
Correct?  
A. Correct.

Q. (b)(6) continued to lay down in the same position and  
didn't get to food and the water?  
A. Correct.

Q. Then, just briefly we heard some prior testimony about  
some classes you may or may not have taken in  
North Carolina, at Camp Lejeune before departing. Do  
you recall taking an EPW course there before departing  
for Iraq?  
A. Yes, sir.

Q. Did it have anything to do with handling prisoners at a  
detention facility?  
A. No, sir.

Q. It was a brief course just focussed on the do's and  
don't's from the capture portion of the EPW's?  
A. Yes, sir.

CC (CAPT STUDENKA): That's all I have, sir.

IO: Captain Jasper?

DC (CAPT JASPER): Thank you, sir.

CROSS-EXAMINATION

Questions by the military defense counsel (Capt Jasper):

Q. Good morning corporal (b)(6)  
A. Good morning, sir.

Q. Um, I just want to cover one area with you. Do you  
remember an EPW coming during -- during the  
indoctrination processing have a lot of sores on his  
body?  
A. Yes, sir.

Q. What do you remember about the treatment he received? -- or what if anything was done with that EPW?

A. Um, the only time I saw him was -- he was isolated from everyone else so that -- whatever he had wouldn't spread to everyone else in the cell, and I think he was given medicine for his whatever he had, sir.

Q. Do you remember if they treated him?

A. I wasn't there at the time. If he was treated.

Q. Okay. Where was this gentlemen with sores on his body isolated?

A. In the rear of the south --

Q. The north cell -- or which cell?

A. I think --

Q. Which holding cell let me refer your attention to the diagram?

A. This one.

Q. For the benefit of the record, the witness has just pointed to the south cell. South holding cell. Where in that holding building was he positioned?

A. To the rear of it.

Q. Did you see if anybody was attending to him?

A. I only saw him one time, and I don't know -- I don't know.

Q. Do you know approximately when this occurred?

A. No, sir.

Q. Where the OIC was at this time?

A. No, sir.

DC: Thank you. I have no further questions.

IO: Lieutenant Folk?

CROSS-EXAMINATION

Questions by the military defense counsel (1stLt Folk):

Q. I just want to draw your attention to the morning of 4 June, from midnight to 0400 in the morning, you never saw either Lance Corporal (b)(6) or Lance Corporal (b)(6) ever touch Mr. (b)(6) with a slap or punch at all?

A. No, sir.

Q. Do you remember Mr. (b)(6) moaning or making any noises like that from midnight to 0400 in the morning?

A. No, sir.

Q. Do you remember telling Lance Corporal (b)(6) or Lance Corporal (b)(6) to leave Mr. (b)(6) alone?

A. Yes, sir.

Q. Why did you tell them that?

A. Because they were wasting their time trying to get them up.

Q. While they were trying to get them up, you never saw them hitting him?

A. No, sir.

DC (1STLT FOLK): I have no further questions.

IO: Captain Francis.

TC: Yes, sir, just a follow up.

REDIRECT EXAMINATION

Questions by the government:

Q. Um, all right. Let's talk about -- again, it might have been Mr. (b)(6); had a question about when the food and water was brought and (b)(6) the (b)(6) came and got the food and water, Mr (b)(6) did not?

A. Correct.

Q. This is still during this midnight to 0400 shift?  
A. No. This was 0400, to 0800.

Q. On the same day?  
A. Was it on the same day? I don't think it was on the same day.

Q. Was it like the next day?  
A. No. Because I got on from 1200 to 0400, and the next shift came on, and I was off until 0400, I think. I think it was the following morning.

Q. Okay. So your next shift, the next day?  
A. Right. The next day.

Q. Okay. Tell us what your observations of (b)(6) at this time?  
A. At this time, we woke them up at 0615, gave them chow.

IO: When you say "they", woke who up? What is "they"?  
WIT: Myself, and Lance Corporal (b)(6), and Lance Corporal (b)(6).

IO: So you were on duty with the same other Marines as you were the previous morning.  
WIT: Yes, sir.

IO: Okay. And who did you wake up?  
WIT: Everyone in the cells, the both cells.

IO: Oh, both of them?  
WIT: Yes, sir.

IO: All right. All of the detainees?  
WIT: Yes, sir.

Questions by the government:

Q. Was (b)(6) the only one that didn't come and get food and water?  
A. Yes. I walked in there and gave him an MRE and water, and he didn't eat. I gave him the MRE by himself, in his hand, and I took the water and put it in the same

cell he was at about 34 feet away from him since he didn't get up the night -- whenever I had him before. I told him you have to go over there and get it, he never did. He didn't even eat the MRE.

Q. Did you think that was unusual at the time?

A. No. I think he was just being spiteful.

Q. How did he appear to you at this time?

A. He sat up when we woke him up so --

CC (MR. ZIMMERMANN): I didn't get that. I'm sorry.

TC: He said he sat up.

CC (MR. ZIMMERMANN): Sat up?

WIT: Sat up.

*Questions by the government:*

Q. Now, let's talk about the training that you said you received before you departed for Operation Iraqi Freedom. That was at Camp Lejeune?

A. Yes, sir.

Q. Who taught that class?

A. I don't remember who taught the class, I knew that we received a brief class on how to handle EPW's, that's it.

Q. You were taught by an officer?

A. Yes, I was.

Q. Was it Major Paulus?

A. I'm not sure.

Q. Okay. Did you hear about a concept in that class called "The Golden Rule"?

A. I can't remember that, sir.

Q. Did you here anything about treating EPW's like you would want to be treated?

A. Yes, sir.

Q. Okay. So you remember that being articulated?

A. Yes, sir.



Q. Okay.

TC: That's all I have, sir.

IO: Captain Jasper?

DC (CAPT JASPER): No, sir.

IO: Lieutenant Folk?

DC (1STLT FOLK): No, sir.

IO: Any need to recall this witness?

TC: No, sir.

DC (CAPT JASPER): No, sir.

DC (1STLT FOLK): No, sir.

IO: Okay. Corporal (b)(6) your testimony is over. You're excused at this time. I would just remind you not to discuss your testimony with any lawyer -- with anyone other than the lawyers involved in this case or any related case, and to be very careful if you are approached by anyone from the media, to discuss your testimony or any aspect of this case. Don't say anything to anyone that you wouldn't want to have repeated in open court under oath.

WIT: Okay, sir.

IO: You're excused.

WIT: Thank you.

IO: Captain Francis, how many more witnesses do you have to call today?

TC: Um, actually, sir, we only have potentially three more. Sergeant (b)(6) Corpsman (b)(6) 1. and I think I am going to call Lance Corporal (b)(6) [ph] now. I think he's going to provide some helpful details.

IO: Okay. I mean, it's a quarter to 1200 now. If we took a lunch break, are we running into a danger of going into the late hours this evening?

TC: I don't think so, sir.

IO: Because if so, we will take a short break and push on.

TC: No, sir. I don't.

IO: Do you all agree with that?

TC: Yes, sir.

DC (CAPT JASPER): Yes, sir.

DC (1STLT FOLK): Yes, sir.

IO: Okay. So we'll take an hour for lunch?

CC (MR. ZIMMERMANN): These have been about an hour or less.

IO: Okay. So you want to take a -- let's take an hour then, and we'll come and get back started at 1245, it's 1145 now. How's that? So we'll stand in recess until 11 -- or 1245.

*The Article 32 hearing recessed at 1143, on 30 January 2004.*

*The Article 32 hearing was called to order at 1245, on 30 January 2004.*

IO: This Article 32 will come to order. All parties who were present when the Court recessed -- or when we recessed, are once again present. Accused and all counsel are present.

Captain Francis, would you like to call your next witness?

TC: Before I do that, sir, since Lance Corporal (b)(6) invoked -- we're offering -- government's offering a sworn statement as the next IO exhibit in order.

IO: Any objection? That would be IO Exhibit Number 49.

CC (MR. HIGGINS): From Lance Corporal (b)(6) sworn statement, I don't have the perams to object, sir.

IO: I agree.

CC (MR. HIGGINS): I think we probably have grounds to -- since we didn't have a chance to cross-examine him after direct testimony, we'll probably have grounds to object, but we would ask the IO to consider the direct testimony.

IO: All right.

CC (MR. ZIMMERMANN): We object. And our objection is to the statement.

IO: All right.

CC (MR. ZIMMERMANN): We have no problem with you considering --

IO: Okay. Lieutenant Folk?

DC: No objections, sir.

IO: IO Exhibit Number 49, which is the sworn statement, will be admitted and considered.

TC: At this time, the government calls Sergeant (b)(6)

Sergeant (b)(6) U. S. Marine Corps, was called as a witness by the government, was sworn, and testified as follows:

*DIRECT EXAMINATION*

*Questions by the government:*

Q. Please state your full name.

A. Full name is (b)(6)

Q. Spell the last time please.

A. (b)(6)

Q. You're a sergeant in the United States Marine Corps?

A. Yes, sir.

Q. Your current unit please?

A. 2d Battalion, 25th Marines.

Q. Are you a reservist?

A. Yes, sir.

Q. All right. Are you currently on active duty?

A. No, sir.

Q. Okay. Please just give us the city and state that you currently reside?  
A. (b)(6)  
Q. Okay. You deployed with 2/25 during Operation Iraqi freedom. Correct?  
A. Yes, sir.  
Q. Prior to that deployment, did you accompany 2/25 to Camp Lejeune?  
A. Yes, sir.  
Q. While at Camp Lejeune, you recall going through any type of Law of War, EPW type training?  
A. No, sir.  
Q. Um, do you recall any classes that were given by Major Paulus?  
A. Prior to going -- yes, sir.  
Q. Okay. Can you tell us what those classes were about?  
A. Um, basically how to approach a prisoner, just basically if you're in the apprehension of a prisoner. That's pretty much it.  
Q. Okay. Did he talk at all about how you're supposed to treat them, do you recall?  
A. Yes, sir.  
Q. What did he say?  
A. Basically, you should abide by the Geneva Convention. Basically, take care of the prisoners as far as food, water, just to treat them as we would want to be treated.  
Q. Okay. Thank you. All right. Fast forward to the actual Operation Iraqi Freedom in Iraq. Okay? And you were stationed at Camp Whitehorse at some point?  
A. Yes, sir.  
Q. Do you recall when you were stationed there?  
A. April, pretty much the entire month of April, May, I saw -- went to the City of Nasariyah, where the COC was, and then I returned in June back to Whitehorse.  
Q. And that's 2003. Correct?  
A. Yes, sir.

Q. Now, while you were there in the facility, do you recall having a prisoner by the name of (b)(6)

A. Yes, sir.

Q. Um, do you recall when you first contact with (b)(6) occurred?

A. Yes, sir. It was the night that he was brought into our custody. It was about 2200 that evening, and I just glanced at him. Basically, they brought him in and he was being searched by Sergeant Pittman, I believe, Lance Corporal (b)(6) and Doc (b)(6), if I'm not mistaken, and I'm pretty sure Staff Sergeant (b)(6) was there as well. I kind of glanced, took a look to see whether or not they needed assistance. I noticed that the situation was under control and went to get some sleep.

Q. Okay. At the time you observed (b)(6) how did he appear to you?

A. He was pretty far. I just saw him maybe 50 feet away from me. It was dark, so I couldn't judge on that.

Q. Okay. Very well. That happened on June 3rd 2003?

A. Yes, sir.

Q. When was the next time you saw (b)(6)

A. The following morning, I believe about 0 --

Q. Okay. What were your observations at that time?

A. Basically, he was not in good shape.

Q. Okay.

A. He was not in good shape, sir.

Q. Okay. Let's make sure we have the time line correct. So you say you saw him the next morning 4 June at 0800?

A. Yes, sir.

Q. How did it come about that you were able to observe him at that time?

A. At 0800 my watch came on shift, and basically the outgoing watch would turn over whatever prisoners over to me. Let me know they could tell me if they had been fed. Just give me some sort of brief, and I would just take over the watch, and that's when, you know, when I first realized that we had prisoners.

Q. Okay. So you're taking over the watch on (b)(6) at that time?  
A. Yes, sir.

Q. And the (b)(6)  
A. Yes, sir.

Q. Who are you taking the watch over from?  
A. I don't recall correctly.

Q. What is the period of your watch from zero -- what to what?  
A. It was 0800 to 12 noon.

Q. Okay. What happened, if anything, with (b)(6) during that time period?  
A. During that time period, the HET Team came and basically I escorted him to speak to the HET Team to be interviewed by them.

Q. How long had you been on watch prior to taking him to see the HET team?  
A. It had to be within the first hour of my watch.

Q. Okay. What were your observations of (b)(6) when you first came on watch before you took him to go see the HET Team?  
A. Well, he -- he was laying on the ground, like I said, in my statement, that he basically gasped for air. He seemed to have trouble breathing and just seemed to be tired and non-cooperative.

Q. What do you mean by gasping for air?  
A. It's basically at the way the weather is over there, the extreme heat, if you only drink water, basically, I guess, you know, you can't breathe right. You start experiencing some physical conditions.

Q. Okay. Any other characteristics you noticed about him on that morning, if you thought something was wrong with him?  
A. Other than that, no.

Q. Okay. What were your thoughts when you observed him?  
A. I thought that he did not want to cooperate with us. That he was paying no attention to you. Basically, you know, when you ask him to get up, he wouldn't do it. When you ask him to move, he wouldn't do it. You ask him to drink water, he wouldn't do it.

Q. Now, at that time, were -- did you think he had any connection with the 507th Maintenance Battalion ambush?  
A. Yes, sir.

Q. How did you receive that information?  
A. We -- we assume that he had some connection because we were told that the prisoners had in their possession a M16 that was tagged labeled on the butt stock, 507 Maintenance Battalion.

Q. Um, and what prisoner was he related to?  
A. They came together so I didn't know how to differentiate them.

Q. Are you referring to (b)(6) --  
A. And the (b)(6)

Q. Okay. Um, what -- okay. Now, you take him to go see the HET Team. Did you pick him up from the HET Team when they were done?  
A. I stayed with him the whole time except that I stayed outside of a little shack where they spoke inside. I stayed outside while they interviewed him.

Q. Okay. After that, after -- I guess the HET Team turned him back over to you, what happened next?  
A. They turned him to the cell, and they asked for another prisoner. He just -- again, he laid on the ground and never got up after that.

Q. Okay. Who had duty with you at that time?  
A. Lance corporal (b)(6) and Lance Corporal (b)(6)

Q. Okay. Was that the last time you saw (b)(6) on that day?  
A. I'm pretty sure, yes. Yes, sir.

Q. Did you see him on June 5th?  
A. Yes, sir.

Q. Please tell us how you were able to see him on that day?  
A. Well, on that day, if I recall correctly, I took over the watch 12 noon, and I was on watch with him for about four hours. Four hours.

Q. Okay. Can you recall what time of day this was?  
A. Time?

Q. Time of day?  
A. Twelve noon, sir.

Q. Okay. All right. During that watch period, this is 12 noon to 1600?  
A. Yes, sir.

Q. All right. During that time period, were there any incidents with (b)(6)?  
A. Yes. Towards the end of my watch, we noticed a couple of the prisoners were complaining about some foul smell inside the cell. They pointed at (b)(6) and at that point, we realized that he had defecated on himself.

Q. Okay. Where was (b)(6) in the cell exactly at the time you noticed him?  
A. Well, there were two cells, and one of the cells he was in the rear area of the cell.

Q. Okay.  
A. The further away from the door.

Q. Was there any type of contraption made inside of these cells to allow prisoners to go to the bathroom?  
A. Yes, sir. They would use MRE boxes.

Q. And what were these MRE boxes, where were they placed, I guess?  
A. That were placed in a corner in the back of the cell.

Q. All right. And did you notice -- where was (b)(6) in relation to this area?  
A. Yes, ma'am. He was pretty close to it, very very close.

Q. And what was his position when you noticed -- you say very very close, how many feet are we talking?  
A. Within arm's reach.

Q. So maybe 2 feet?  
A. Yes, sir.



Q. When -- please describe for us, if you would, what typically -- when you observed an EPW defecate in an MRE box, how was that done?

A. Well, basically they would squat down and take care of their necessity.

Q. Hold the box under beneath them?

A. Yes, sir.

Q. As they squatted?

A. Yes, sir.

Q. Now, and were the EPW's directed on, exactly where in the cell they were allowed to do this?

A. Yes, sir.

Q. Okay. Um, in that particular area of the cell, how would these MRE boxes -- how are they disposed of?

A. Well, after the prisoners would use the box, we would ask that prisoners -- we would have one Marine escort him into a pit area where that would be dropped and would be burned eventually.

Q. Okay. Were there boxes already set up in that area to use?

A. Yes, sir.

Q. So (b)(6) as you described is about two feet from this area, and that's his position when you saw him laying?

A. Yes, sir.

Q. Was he laying on his stomach or his back?

A. If I recall correctly, he was sideways. On his side.

Q. Okay. And please describe his physical condition that you observed at that time?

A. Well, every time I saw (b)(6) he would display the same physical condition in my eyes. Gasping for air, just seemed tired, and uncooperative.

Q. Okay. When you say cooperative, what do you mean?

A. We would ask some of the prisoners to -- given an order. When they would put the water bottle in his mouth, he would spit the water out. He would not take anything that came from us. Just -- food, water, you know, anything. Just -- he would refuse.

Q. Okay. So he wasn't even drinking water when other prisoners tried to give him water?

A. No, sir.

Q. Um, all right. So you noticed that he had defecated himself -- did you see the type of defecation that was? I mean, was it runny? Was it thick, could you tell at that time?

A. It was coffered with sheets, sir, so I'm not able to say, sir.

Q. Okay. How about the smell?

A. It smelled pretty bad.

Q. Worse than typical feces in your experience?

A. Well, the cells would smell bad to begin with. I mean, you have prisoners that are sweating and it's just a tight area, and just the whole fact that, you know, you have to use the cell also to -- as a bathroom facility, the cell smelled pretty bad. I can't say.

Q. Okay. How hot was it at that time of the day, can you recall?

A. Well, those -- that week, we reached very very high temperatures. If I recall correctly, we had temperatures over 120, if I'm not mistaken.

Q. Okay.

A. So it was pretty pretty hot.

Q. All right. Okay. So you observed (b)(6) laying there, he had defecated himself, what happens next?

A. Towards the end of my shift, so we waited 'til the night shift came over so that they could help bring in -- doing the cleanup job basically.

Q. Okay. Um. do you remember who was on that next shift?

A. Sergeant (b)(6) I guess, Lance Corporal (b)(6) and Lance Corporal (b)(6).

Q. Okay. Did you observe what they were doing with (b)(6) at all?

A. I'm sorry, could you --

Q. Um, when they came on shift, you said you were waiting to do anything to (b)(6) I guess, start cleaning what have you, until they came on shift, did you observe what they did with (b)(6) when they took over the shift?

A. Yes, sir. Basically, they took him out of the his cell and they had other prisoners clean him.

Q. Okay.

A. And clean the cell.

Q. Okay. How -- what was your possession in relation to observing this?

A. I was at the door.

Q. Okay.

A. The hatch.

IO: Can I interrupt here? You said they took (b)(6) out of the cell?

WIT: Yes, sir.

IO: All three of them. Sergeant (b)(6) I guess, Lance Corporal (b)(6) and Lance Corporal Hearing[ph], or -- one or a combination of those.

WIT: He was taken out from the cell from inside the cell by Lance Corporal (b)(6)

Questions by the government:

Q. Okay. Did you what was your position in relation to Lance Corporal (b)(6) when you saw him?

A. Basically, my position to you right now, sir.

Q. Okay --

A. Except that Lance Corporal (b)(6) had his back towards me.

Q. Okay. So his back was towards you?

A. Yes, sir.

Q. Were you able to see --

IO: Hold on a second. About 15 feet away?

WIT: Less than that, sir.

IO: Okay.

Questions by the government:

Q. About 12 feet?

A. Ten --

Q. Was it 10 feet?

A. Yes, 10 feet.

Q. Um, okay. Was Lance Corporal (b)(6) moving towards you?

A. Yes, sir.

Q. Was he stepping backwards?

A. Yes, sir.

Q. Could you see how his hands were placed on (b)(6) ?

A. Well, when (b)(6) was first laying on the floor, he was -- how can I put it. Basically, he was laying sideways. So when (b)(6) first grabbed him, he went in towards the upper body area, and at that point, I'm looking at Lance Corporal (b)(6) sideways. Once he started moving towards the hatch, he's -- given, his back towards me. When I first saw him grabbing him, I saw him grabbing him around the armpits area, grabbing the clothes. I noticed the smell was horrendous, and he was having a hard time trying to grab him, and I guess he was a little desperate, you know, he wanted to get it done fast.

Q. So what -- did you see -- what was the next position that you saw Lance Corporal (b)(6) in?

A. Once he managed to pull him up, after that, I guess he was slipping for whatever reason. He couldn't get a good grip at him, he grabbed him somewhere by the head.

Q. Did you hear anybody tell him to do that?

A. I don't recall exactly if someone told him that. No, sir.

Q. Okay. And you said you saw him grab him around the head, were you able to tell exactly how he was doing that?

A. Well, being that he had his back to me, I saw that as he exited the hatchway. When I stepped away, and he had, like, a hand around the chin area, and the back of the head.

Q. Okay. And that was -- now, did you see how he manipulated the corner coming out of the hatch?  
A. It was one flow of motion, one steady drag. He just kept moving.

Q. Okay. You said he was wearing gloves at that time?  
A. I can't say he was, but the normal was to wear gloves.

Q. Okay. And you said he originally was having trouble with the body, (b)(6) because he was slipping off of it?  
A. Yes, sir.

Q. Did you conclude that (b)(6) skin must have been slick?  
A. Maybe sweaty, sir. Yes.

Q. Um, okay. So you're standing behind Lance Corporal (b)(6) and he's moving backward toward you with (b)(6) what's the next thing you say?  
A. He was placed in the sand pit. That's from the original position where (b)(6) started pulling, that might be 20 feet worth of drag away from the original position. About twenty feet away, and at that point he had Sergeant (b)(6), I guess, he instructed some prisoners to take some clothes off. To take his clothes off and clean him. And I can't remember who did that, but I think it was this person we used to call "Hollywood" and another one that they used to call "attitude".

Q. Let me refer you to IO Exhibit 6. It's up there. Is that a fair and accurate depiction of the lay out of the detention facility as of 5 June 2003?  
A. I'm sorry, sir. I'm not getting this.

Q. This diagram here, these are supposed to represent the lay out of the detention facility. In your opinion, is that a fair and accurate depiction of that?  
A. Yes, sir.

Q. Okay. Using that diagram, can you please point to the diagram where it is that you saw (b)(6) placed?  
A. Over here.

Q. Okay. The witness is pointing to the holding pen which is clearly marked. Could you please point to the specific area of the holding pen that you saw him placed?

A. Well, the holding pen goes more this way.

Q. So it's supposed to be more south?

A. More towards this area, but basically right here.

Q. Okay. So you saw him dragging him into the southeastern corner?

A. From this diagram, yes, sir.

Q. Okay. At that point -- so all right. Do you recall if (b)(6) was naked or clothed at that time?

A. When he first was placed, he was clothed. After that, he was -- they asked to remove his clothes. Obviously, he was the -- the clothes were dirty. The clothes needed to be washed so they had the prisoners wash his clothes and basically gave him a bath.

Q. Okay. All right. At that point, did you go off duty?

A. Yes, sir.

Q. When was the next time you saw (b)(6)?

A. Midnight.

Q. What were the circumstances that you saw him?

A. He was still laying in the same place where I left him that afternoon.

Q. All right. Well, when you saw him last?

A. Where I saw him last, yes, sir.

Q. Okay. So now when you -- when you come on duty, who's on duty with you at this time?

A. Same Marines, as before, Lance Corporal (b)(6), Lance Corporal (b)(6), and myself. And --

Q. And was (b)(6) clothed at that time?

A. No, sir.

Q. Did you send someone out to check on him?

A. Yes, sir.

Q. Who did you send out?

A. Lance Corporal (b)(6)

- Q. When lance -- okay. What happened from that?
- A. Lance corporal (b)(6) checked the Marine, he said, "I think he's dead," and I quote, "I think he's dead". And at that point, I told him to come and hold the position where I was and I went and took a look at (b)(6), and I did not feel a pulse on him so I pretty much came to the same conclusion, but I'm not a doctor so I don't know. I ran to get Staff Sergeant (b)(6) and basically contact the corpsman and they checked him.
- Q. Now, how, like, did you -- when you began your shift at midnight, how long was it until you sent (b)(6) out there to check on him?
- A. Maybe twenty minutes, half an hour later.
- Q. So you first noted him dead about twenty minutes after midnight?
- A. Yes, sir.
- Q. Now, after -- well, how was (b)(6) laying when you saw him out there twenty minutes after midnight?
- A. Like a semi fetal position.
- Q. Now, after this incident, did you have any conversations with Lance Corporal (b)(6)?
- CC (MR. HIGGINS): I'm going to object on 305, and 31(b) because I think this conversation took place -- well, into the NCIS investigation. He is a non-commissioned officer at the time talking or questioning Lance Corporal (b)(6) after it was clear that the -- at least from the NCIS investigation, that Lance Corporal (b)(6) was a suspect in this case.
- IO: I understand the nature of your objection. I don't have enough facts for me to rule on it at this point so --
- Questions by the government:*
- Q. Again, not getting into the substance of any potential conversation you had with Lance Corporal (b)(6) but did you have a conversation with (b)(6) Lance Corporal (b)(6)?
- A. Yes, sir.

Q. Please, without getting into the substance of it, please tell me how that conversation began?

IO: Let me ask the question. When did this conversation occur?

WIT: After the second interview with NCIS.

IO: This would be days or weeks later after (b)(6) body was discovered 20 minutes after midnight?

WIT: Yes, sir.

*Questions by the government:*

Q. And how did the conversation occur?

A. Basically.

Q. Again, without getting into the substance of it.

A. Okay. Basically, we wrote -- back at Whitehorse, we wrote some statements explaining what happened with (b)(6) and after that a couple of days later, they sent some Helo's[ph] -- some birds to come pick us up and bring us to Kuwait because NCIS wanted to see us. Well -- let me go back for a second. They went to Whitehorse, we wrote a statement, we spoke to them, and a couple of days later, they picked us up in some barracks and flew us to Kuwait for further investigation. At that point, there was like a much wall of concern in the air, like, what's going on some, sort of apprehension. What's going on. So when -- at this point, when I was interviewed the second time, they asked me some specific questions regarding what might have happened to (b)(6). And at that point, we didn't -- I didn't know exactly what was going on. So it was -- we were feeling a little worried, you know, like, "What's going on?" We didn't know what was going on.

Q. Okay. I guess, how did the conversation begin? Did you begin questioning him or did he just start talking to you without any problems?

A. No. We always spoke. We always spoke. The conversation aroused from basically exploring -- trying to figure out why we were there. Just the whole nature, "Why are we here? What's going on?" That's where the conversation --



Q. Did you suspect him of anything at that time?  
A. No, sir.

Q. Did you think he committed any type of crime at that point?  
A. No, sir.

Q. Is there, based on -- I guess, all the announcements that we've done earlier, all the other cases that I think you can --

IO: Well, let me ask a couple questions. Where did this conversation take place with Captain Francis?

WIT: The conversation took place at Camp Matilda, sir -- no not Matilda SI --

IO: In Kuwait?

WIT: In Kuwait, sir, yes, sir.

Q. While you were waiting to be interviewed or --

WIT: After I was interviewed.

IO: After you were interview?

WIT: Yes, sir.

IO: Go ahead.

WIT: NCIS pretty much, they -- when they interviewed me, they said, "Well we think that he had broken ribs, that he had a broken neck and broken legs." That's how they were questioning me. They were telling that's -- those were their tactics when they were talking to me so at that point, you know, like wondering what happened. You know, if they are saying this guy had a broken neck or broken rib, what happened. And they mentioned, "Well, you know, we heard that lance corporal" --

IO: Hold on. Hold on. Now, had Lance Corporal (b)(6) been interviewed by? At this point in time.

WIT: Once before, yes, sir.

IO: Once already.

WIT: Yes, sir, everyone was.

IO: And when you were -- when you had this talk with Lance Corporal (b)(6) was it just the two of you alone or were there other Marines around?

WIT: No. Just us two, sir.

IO: And without telling me what was said, I mean, who initiated the conversation, did he come up to you or did you come up to him or what?

WIT: I don't recall how it was initiated, but we -- when we met, we talked about -- we talked about what happened and what was said at this second interview.

IO: Now -- well, go ahead.

WIT: I know I was not supposed to discuss what was said at the interview, but basically like I told him, they saying that this man possibly had broken ribs, broken neck and broken legs.

IO: And then after you said that to Lance Corporal (b)(6) did you ask him questions? Sort of like what we're doing now, we're asking questions trying to get information or did you just have a discussion or conversation.

WIT: No. Just basically -- just conversation, sir. No questions asked. Just maybe perhaps -- you know, being what they were throwing -- being prior -- what happened, maybe you think my sections might have done something you know -- I don't know. That's --

IO: So when you were talking to Lance Corporal (b)(6) were -- did you say, "Hey, did you do this? Did you break his legs? Did you break his neck or" --

WIT: No, sir. No, sir.

IO: Was it like that or --

WIT: No, sir. It was moreover an innocent thing. It's more than like, "When I dragged him from here to here, you know, could that be the reason these people say -- because that's what they said to me. They said to me that someone said that Lance Corporal (b)(6)

dragged him. That's what NCIS said to me so at that point, you know, could that be the reason why, you know, why he had a broken neck, if in deed he had a broken neck?" That was the conversation, sir, and he never asked far as I understand. He never denied that he dragged him in that fashion, sir.

IO: Okay. Now, did you believe in your conversation with Lance Corporal (b)(6) at this time, and at that place that it was a conversation between understanding your relative ranks, you being a sergeant, and he being a lance corporal, that this was a conversation between a senior NCO to a lance corporal. And he was required to answer your questions or more of a conversation among, you know, fellow Marines?

WIT: I wasn't asking questions to Lance Corporal (b)(6). It was more of a regular conversation of -- as to what was going on. No questions -- I didn't feel that -- I never suspected anyone of doing anything wrong in the facilities as far as the time I was there. And it just felt unfair that we were being treated the way we were being treated.

IO: In other words, and I'm -- I'm not trying to put words or thoughts into your mouth, but from what I'm hearing you say, it seems to me that this was not like the experience you had with NCIS when they were interrogating you. They are asking you questions and expecting answers.

WIT: Right. Sir, right.

TC: It wasn't like that.

WIT: No, sir. No, sir. Definitely not.

IO: Any questions in light of mine?

TC: No, sir.

IO: I'm going to allow the conversation to come in because it doesn't appear like it was intended to be an interrogation nor was it conducted, like, one, and it would seem to me more of a conversation, and I think that that's -- I think it would come into a court-martial if it gets that far. Under the circumstances, I don't think rights were required to be

read at that point either. Even though, clearly at that point -- let me ask you this. When you were interviewed by NCIS, did they read you your rights before they talked to you.

WIT: No, sir.

IO: Okay. Mr. Higgins.

CC (MR. HIGGINS): I object to it coming in against Major Paulus.

IO: I understand that and it won't. It will only be considered with respect to Lance Corporal (b)(6). And I assume, Lieutenant Folk, that you would have the same --

DC (1STLT FOLK): Yes, sir.

IO: Same objection.

TC: I raise at one point that with regards to yesterday, Agent (b)(6) had given -- described the demonstration that Major Paulus had done during his interview with them.

IO: Yes.

TC: And I asked that it be considered against (b)(6) and now based on your ruling today, regarding, you know, admissions made by the accused.

IO: Now, I'm (b)(6) and I can't remember what happened.

TC: All right, sir. Because at that time I had asked that it be only considered against (b)(6) and he said it opened the door under the rule of completeness, if you recall.

IO: I got to be quite honest with you. I had some difficulty trying to visualize in my -- my head how he was trying to describe it orally over the speaker. I don't know if I'm going to put a whole lot of weight in it. I mean, I go back and review my notes, but --

TC: Well --

IO: Trying to visualize it the best I could but --

TC: But it's an issue for argument because if you recall, sir,

he said he observed him carrying him like a log.

CC (MR. ZIMMERMANN): We have a witness on the stand.

IO: Well, that's true. That's true. Let's revisit that. You're absolutely right, Mr. Higgins. Thank you. Let's revisit that at another time. You could go into the conversation.

Questions by the government:

Q. Okay. Um, all right. So this conversation with Lance Corporal (b)(6) what did he tell you about this dragging? Was there any concerns he might have had?

A. Basically, you know, is that possible. Some -- maybe like a little bit of a time. Amazement or just surprise, or perhaps a bit concern being that I'm just commenting about what NCIS said. That was the possibility of the person having a broken neck and associating it with you dragging him.

Q. Okay. Now, let's talk about -- go back to the dragging incident for a moment. Was -- how was (b)(6) at that time? I mean, was he providing any assistance to (b)(6) ?

A. No, sir.

Q. Please describe what his position was that you saw at least during the portions that you saw the dragging?

A. He just aloud himself to be dragged. Like you would drag a doll or anything.

Q. How was his legs?

A. Straight.

Q. How was his arms?

A. Same way, sir.

Q. Okay. Did he reach up to try to brace Lance Corporal (b)(6) hands in any way?

A. I don't recall, sir.

Q. Do you recall him yelling out in pain or agony at all?

A. No, sir.

TC: That's all the questions I have, sir. Thank you.

IO: Thank you. Cross-examination, Mr. (b)(6)

CROSS-EXAMINATION

Questions by the civilian counsel (Mr. (b)(6))

Q. Sergeant (b)(6) first shift you worked, you said was 0800 to 1200 shift; is that correct?

A. Yes, sir.

Q. You state you weren't certain which actual guard team you relieved?

A. Yes, sir.

IO: Mr. (b)(6) I hate to interrupt, what date are we talking about.

CC (MR. (b)(6)) I'm sorry.

Questions by the civilian counsel (Mr. (b)(6))

Q. It was 4 June. Was that the first time you actually went to shift with (b)(6)?

A. Yes, sir.

Q. Okay. Now, the 4 June shift was from 0800 to 1200. Correct?

A. Yes, sir.

Q. Could Lance Corporal (b)(6) have been on that shift that you relieved?

A. It's possible, sir. Very possible, sir.

Q. At the time you saw (b)(6), all during your shift -- or from the beginning of the shift, (b)(6) was just lying on the ground. Correct?

A. Yes, sir.

Q. He was moaning?

A. I said gasping for air, sir, he could have been moaning.

Q. Gasping for air, potentially moaning?

A. In and out, yes, sir.

Q. Difficulty breathing?

A. Difficulty breathing.

Q. When it was time to take him to the HET interrogation, he wouldn't get up?  
A. No, sir.

Q. You had to go physically help him to his feet. Correct?  
A. Yes, sir.

Q. You didn't just escort him over to the interrogation room, you actually had to stabilize him to get him to walk to the interrogation room. Correct?  
A. Yes, sir.

Q. That interrogation lasted approximately how long?  
A. Approximately half an hour or so, sir.

Q. Did you actually assist (b)(6) to the seat in the interrogation room?  
A. Just to the door and just handed him over to the Marine that is in there.

Q. Okay. That would have been Sergeant (b)(6) Sergeant -- Staff Sergeant (b)(6) and maybe Lance Corporal (b)(6) :[ph]?  
A. I don't know exactly who was there, sir. Had some guys from the HET Team.

Q. But even during the walk over there you noted the same difficulty breathing, at least that's what it appeared to you. Correct?  
A. Yes, sir.

Q. Then after the interview at the door, you again took possession of (b)(6). Correct?  
A. Yes, sir.

Q. Again, you had to assist him walking back to the same holding building. Correct?  
A. Yes, sir.

Q. Same condition?  
A. Yes, sir.

Q. Same difficulty breathing?  
A. Yes, sir.

Q. Same gasping?  
A. Yes, sir.

Q. Soon as you got back to the holding building, he immediately went back down to the ground. Correct?  
A. Yes, sir.

Q. And just simply didn't get up during the remainder of your shift?  
A. No, sir.

Q. Now, you actually -- at that point, he was lying down and you're assisting him over, he was robbed the entire time?  
A. Yes, sir.

Q. At that point, you had know knowledge of him having broken ribs. Correct?  
A. That's right, sir.

Q. Was the breathing and his behavior, and difficulty moving consistent though to you of somebody with broken ribs -- or --  
A. I'm not an expert, sir. I would not know.

Q. Okay. And did you recall that shift he wasn't eating. Correct?  
A. That's correct, sir.

Q. He wasn't even drinking during that shift?  
A. That's correct.

Q. And that's the last you dealt with him that day. Correct?  
A. Yes, sir.

Q. The next shift, 5 June 2003, that's a noon to 1600 shift?  
A. Yes, sir.

Q. (b)(6) again lying on the floor?  
A. Yes, sir.

Q. Gasping for air?  
A. Yes, sir.

Q. Difficulty breathing?  
A. Yes, sir.

Q. Something about him just didn't look right?  
A. Yes, sir.



Q. Um, to your knowledge, he had been checked by a corpsman during this period of time. Correct?

A. That's -- that's the only reason that I assumed he was okay.

Q. You made attempts on the 5th of June to give him water also. Correct?

A. Yes, sir.

Q. You even had the (b)(6) go and pour water in his mouth; is that right?

A. Yes, sir.

Q. And he didn't even take that water that they gave him?

A. He wouldn't take it.

Q. At some point, the other prisoners were pointing out a smell; is that right?

A. Yes, sir.

Q. And this is a -- despite the regular smell of the feces and the smell, this was an extra stronger bad smell?

A. Yes, sir.

Q. The other prisoners motioned and you had realized at that point that he had defecated himself. Correct?

A. Yes, sir.

Q. Now, I want to talk to you briefly on what we would call "the dragging incident". To be fair, during the majority of this time, Lance Corporal (b)(6) back was to you. Correct?

A. Yes, sir.

Q. But let's make it clear, at no time did you ever see any part of the lance corporal's hands, fingers, thumbs, anything around the neck area of (b)(6)?

A. No, sir.

Q. Now, the front door of the holding building to the holding pen, did Lance Corporal (b)(6) to your recollection, get any assistance or moving (b)(6) at that point?

A. I'm not quite sure but I think he was being helped by Lance Corporal (b)(6).

Q. But you don't, you can't say with certainty that Lance Corporal (b)(6) was assisting him?

A. No. I can't say that, sir.

Q. During the next shift that you worked with -- well, let me ask you this, on Lance Corporal (b)(6) shift, is he a single Marine on that shift?

A. No, sir.

Q. Did Lance Corporal (b)(6) dictate to the other Marines on the shift where (b)(6) does and doesn't do?

A. No, sir.

Q. Does Lance Corporal (b)(6) have any control of that body? I mean, holding him for any period of time.

A. No, sir.

Q. He's following the orders of the other Marines. Correct?

A. Yes, sir.

Q. You came back on, I guess, midnight starting 6 June. Correct?

A. Yes, sir.

Q. Then at some point, 15 to 20 minutes into your shift -- or 20 to 30 minutes into your shift, that's when you noticed (b)(6) was no longer moving?

A. That's correct, sir.

Q. Or showing any signs of life at that point?

A. That's correct, sir.

Q. Um, Doc (b)(6) came eventually and declared him deceased?

A. Yes, sir.

Q. The prior to placing him in a body bag, you had noticed that he defecated on himself again; is that correct?

A. Yes, sir.

Q. And EPW's cleaned his body before placing him in the body bag?

A. That's correct, sir.

Q. So you personally saw at least twice the defecating that initiating the move. Correct?

A. Yes, sir.

Q. And then at death, the defecation?  
A. Yes, sir.

Q. Since we've talked about it on direct. I want to talk about this conversation you had with Lance Corporal (b)(6) down in Kuwait. NCIS had already interviewed you. Correct?  
A. Yes, sir.

Q. They had already interviewed Lance Corporal (b)(6)  
A. Yes, sir.

Q. And NCIS was telling you that Lance Corporal (b)(6) had -- during this drag with the hand on the chin and the back of the head, that he has potentially broke his neck. Correct?  
A. Yes, sir.

Q. And they told Lance Corporal (b)(6) the exact same thing. Correct?  
A. Yes, sir.

Q. That's what Lance Corporal (b)(6) was upset about. The way NCIS was claiming that he had broke his neck. Correct?  
A. Yes, sir.

Q. Did they tell you -- when they talked about the broken neck, were you working under the assumption that the actual neck was broken?  
A. Yes, sir.

Q. Did they ever tell you that it was just a small bone in the neck area?  
A. No, sir.

Q. And I want to refer you to the impression they gave you, the broken neck we're talking about, they defined it as a vertebrae in the back of the neck. Correct?  
A. I assumed that was the cause of death.

Q. Finally, if someone says he died from a broken neck, you're assuming that he had snapped a vertebrae in his neck. Correct?  
A. Yes, sir.

Q. And discussing that Lance Corporal (b)(6) described you just as you saw. He had one hand in the back and one hand in the chin. Correct?

A. Yes, sir.

Q. And he didn't see how that could have possibly broken his neck. Correct?

A. Yes, sir.

CC (MR. (b)(6)) That's all I have, sir.

IO: Thank you. Captain Jasper?

DC: Thank you, sir.

#### CROSS-EXAMINATION

Questions by the military defense counsel (Capt Jasper):

Q. I'm going to focus you on the training you received at Camp Lejeune before you went to the war. During that --

A. Yes, sir.

Q. -- law of war training?

A. Yes, sir.

Q. Geneva Convention training?

A. Yes, sir.

Q. Okay. Were you ever taught how to become a prison guard during this training?

A. Mildly, sir. We did receive some brief instructions on how to deal with prisoners, but nothing intense, sir. I've never received intense training as far as becoming a prison guard.

Q. What is your MOS?

A. I'm a cook, sir, 3381.

Q. You're a cook?

A. Yes, sir.

Q. And how long were the classes given by Major Paulus? How long were they?

A. I think we -- I can't recall correctly, approximately two weeks, and I'm pretty sure we had a class like everyday.

Q. What was the focus of this training?  
A. To try to give us -- get us prepared for what we were going to encounter when we arrived at Iraq.

Q. And what did he tell you concerning any prison guard duties you were going to encounter?  
A. Like I said before, Major Paulus always wanted us to treat the prisoners like we wanted to be treated. If we were caught by the enemy, how we would want to be treated. That we play fair, that we play by the rules.

IO: I'm sorry. Maybe you're going to cover this, but I want to make sure that I'm clear in any understanding of what you're saying. Did you receive training on how to be a prison guard, a guard in the jail or just training on how you were to deal with EPW's -- or enemies that you may have captured out on the battle field.

WIT: Uh --

IO: See the difference?

WIT: Yes, sir.

IO: Sort of like when a policemen captured a criminal on the street, they are not the actual guard. They take them to a jail and then there are jailers or guards there that take care of them, and your job is done as the policemen.

WIT: Right.

IO: So were you getting training on how late to be a policeman when you captured prisoners out in the field, and how to handle them until you actually turned them over to a detention facility, or did you get training on how to be a guard in the detention facility.

WIT: It's really an unfair question, sir.

IO: I apologize for that. I'm trying --

WIT: I'm sorry, sir. The reason why it's unfair question is because we had a very limited time to prepare so we tried to cover a little bit of everything, in a very very short period of time. So, you know, I cannot say we received training to be a prison guard --

IO: Okay. That's what I'm asking you.

WIT: That takes months, sir.

IO: No. I'm not arguing with that. Did you get any type of training just like that?

WIT: Just brief -- brief, sir. Very brief.

*Questions by the military defense counsel (Capt Jasper):*

Q. So you really didn't remember anything other than what you just told us about how you're supposed to treat prisoners. Right?

A. Yes, sir.

Q. You weren't given any other information about how to run a detention facility?

A. No, sir.

Q. Is there anything else that you learned in these classes about running a detention facility?

A. You know, basically --

Q. Don't make it up. I want you to be sure about your answers?

A. Not supply deadly force unless it's absolutely necessary. You know, just general stuff, sir. Very general.

Q. All right. Have you ever heard of anybody in their unit desiring to harm (b)(6) because of his involvement with the 507th Maintenance Battalion ambush?

A. We were upset, sir, to be honest with you. I personally, was upset to hear the news. You know, I felt happy in a way, yes, sir, you know, we got somebody that had this type of involvement. At least we had this person. I was happy. You know, I was upset to be at this person's presence, but I didn't know whether he was guilty or not at that point so --

Q. You were upset and had discussions with others who were upset?

A. Yeah. Everyone was upset, sir.

Q. What were some of the things that you were talking about?

A. Just general, sir. Just basically we're happy to have

him and that's pretty much it, sir.

Q. Who are you conversing with on this issue? Who are you talking with?

A. I can't say specific Marines, but just basically persons in the camp that knew about (b)(6) being there. The only people that knew about it were the senior staff and the Marines at the EPW facility to my knowledge, so just basically discuss amongst us.

Q. Okay. Were the other people upset?

A. Yes, sir.

Q. You're a corporal. You and the lance corporal talking about how upset you were about (b)(6) involvement potentially?

A. Yes, sir. everyone was upset, sir, but we were glad to have him.

IO: I apologize, but when you say you're upset, were you upset at the fact that you learned that he had died or you were upset that he may have been involved in the 507th.

WIT: Right, sir. We weren't upset at the fact that he had involvement, direct involvement with the 507.

IO: Okay. Thank you.

Questions by the military defense counsel (Capt Jasper):

Q. Okay. I'll try to be a little bit more direct with the question. I'm sorry, sir, for that vagueness. So you're upset, you were upset at (b)(6) for potentially being involved with the 507th ambush of your recollection?

A. Yes, sir.

Q. On the 5th of June when you learned that a corpsman had evaluated (b)(6) and he informed you that he seems to be fine, did you trust the corpsman's opinion?

A. Yes, sir.

Q. Why?

A. I trusted the corpsman's opinion because of the fact that (b)(6) never drank water, so I thought that might explain his situation. That might explain the reason why he was moaning and having difficulty breathing. That was my justification when they checked him and they

said he's okay. I think that whatever estranged feature he showed was because of the fact that he's not drinking water or he's not eating.

- Q. Did you inform anybody -- each and every encounter he had where he's having trouble breathing, did you inform anybody of this condition that you found in (b)(6)?
- A. Basically, it was passed from watch to watch. We would also say this person won't eat, this person is not drinking water, you know, he cooperated when he asked him to. So everyone was aware of the situation, sir. And another reason why I didn't think there was anything wrong with that prisoner was because I mean, like, I trusted the corpsman's opinion because there was an incident prior to that, I don't know if I could mention this, but there was another prisoner that had some physical condition that had to be rushed to the hospital, and we did that. So from prior experience, if we have someone that needed medical attention that we could not provide at the EPW facility, that prisoner will be taken to the hospital. Like it was done in the past.
- Q. So in your experience based on your observations, were people being attentive to (b)(6)?
- A. Yes, sir. Very attentive.
- Q. They weren't ignoring him. Were they?
- A. No, sir. Very attentive.
- Q. How many times did you see the corpsman treating him?
- A. I saw him treat him every time I was on watch, and I was told of the times when I was not on watch. So the whole time -- I'm pretty sure at least five or six times, within the three days.

DC (CAPT JASPER): Thank you.

IO: Lieutenant Folk?

DC: Yes, sir.

#### CROSS-EXAMINATION

Questions by the military defense counsel (1stLt Folk):

- Q. You're a Sergeant. Right?
- A. Yes, sir.



Q. Okay. Just want to make sure. Sergeant (b)(6) you said you were present briefly for that indoctrination period, in-processing period of (b)(6) on the 3rd?  
A. By saying present --

Q. You're in the area?  
A. I was in the area, yes, sir.

Q. You didn't have any real active role?  
A. No, sir.

Q. You just knew it was going on?  
A. I took a glance at it. Basically seemed to be under control. I went about my business.

Q. And the next time you had any real contact was at 0800 the following morning?  
A. Yes, sir.

Q. Than was the 4th of June?  
A. Yes, sir.

Q. And that was the day that (b)(6) was taken to that little HET compound that is located in the lower left hand corner of the diagram there?  
A. Yes, sir.

Q. Is that correct?  
A. Somewhat, sir.

Q. Close enough?  
A. For the model; that's correct, sir.

Q. Okay. Now, the procedure you were operating under at Camp Whitehorse, at the detention facility, was that prior to seeing the HET Team, the detainees had to be given the thumbs-up by the document. Right?  
A. Yes, sir.

Q. What with (b)(6)?  
A. Well, the HET Team, prior to seeing the HET Team, there was not a corpsman there. I don't recall there being a corpsman at that particular time. There was definitely a corpsman at the point where we received the prisoners.

Q. So you are not aware of (b)(6) seeing a corpsman prior to seeing the HET Team that morning?  
A. Obviously, he did the night before but not the morning.

Q. Okay. Now, you -- you said you walked (b)(6) over to the HET Team's facility?  
A. Yes, sir.

Q. And this afternoon you walked him back?  
A. Yes, sir.

Q. And you actually were able to kind of observe some of what was going on -- and when I say observing, I don't mean visually, but you were able to hear some of the things; that is, were going on inside the area where the HET Team was conducting their interviews?  
A. Yes, sir.

Q. And what did you hear?  
A. Arab language, back and forth.

Q. What was the volume?  
A. It was no yelling.

Q. And when you first saw (b)(6) on that morning on the 8th, you said he wasn't cooperative?  
A. Yes, sir.

Q. And you said that he wouldn't get up when you wanted him to get him?

IO: Excuse me. You said the morning of the 8th?

DC: I'm sorry. If I did -- 8:00 o'clock in the morning on the 4th.

WIT: Yes, sir.

Q. Now, I want to get into that for a minute. Is it your opinion based on your observations, that did he not want to get up because he physically couldn't get up or was he just trying to be a pain in the neck to you as a Marine?  
A. Well, not a pain -- whether it was something -- (b)(6) was over 50 years old, and if he did serve for Saddam Hussain, and I don't see why he would, you know, as long as he was serving for Saddam Hussain, I don't know why he would willingly want to cooperate with his capturers.

Q. If I wasn't clear, I apologize. I'm sorry. But based on your observations of him that morning, and what you observed from (b)(6), did you think that this guy got

a physical condition that makes it impossible for him to get up or do you think he was basically not getting up because he was trying to be difficult or trying to be a problem?

A. I'm not a doctor so I figured that, yes, he was just being difficult.

Q. Okay. Did he scream in pain when you went to pick him up?

A. Just gasped for air, sir.

Q. Did he scream? Pain?

A. No screaming going on.

Q. Was he making any gestures that would indicate he was in some kind of serious pain when you went to pick him up, or was it more of this, just moaning and --

A. His hands were tied behind his back so he would not -- he would not be able to point if he was in some sort of pain.

Q. You had prisoners who had medical conditions, that wasn't uncommon?

A. Yes, sir.

Q. And that somehow or another even though they couldn't speak English, they could communicate to you that they had some problem with their body. Right?

A. Yes, sir.

Q. (b)(6) wasn't doing any of that with you, was he?

A. Just moaning, sir.

Q. Okay. And when you say "just moan," was it just kind of a general moan, just the way he operated basically?

A. As far as I saw him, every time I saw him, that's how he operated.

Q. Okay. And what I mean, he didn't moan more when you grabbed him than before you grabbed him. Right?

A. No, sir.

Q. Okay. So it wasn't like you went to lay your hands on him and he moaned really loud, did he?

A. Right.

Q. And when you escorted (b)(6) to and from the HET building, he was hooded. Correct?

A. If I recall correctly, he was, sir.

Q. So he would have needed the be guided along so that he just didn't walk off into God know's where. Correct?

A. That's correct, sir.

Q. And the reason they were hooded was because that's what the HET Team wanted. Right?

A. Yes, sir.

Q. Okay. They had some kind of security concerns that they didn't want the prisoners to know what was going on?

A. Yes, sir.

Q. Okay. Now, the one of the things I want to focus on, you said that (b)(6) didn't like to eat and didn't like to drink water, generally speaking. Right? And I think you described that he actually spit water out at one point?

A. Yes, sir.

Q. When you say he spit water out, how did you take that? Did you take that to mean, I won't drink your water or was it like, I can't physically drink water?

A. I thought that he -- my assumption, the whole time was I don't want to drink your water.

Q. Okay. And your opinion is just based on all your observations, and how he behaved toward Marines?

A. I can't say just towards me because the only time I dealt with him was --

Q. Okay. Your observations is based on your experiences?

A. Yes, sir.

Q. And your experience with him was that he didn't like Marines, he didn't like Americans. Right?

A. I can't -- obviously if he was Saddam Hussein, he definitely did not like Americans.

Q. Okay. Would you say he was friendly toward you?

A. There was no way of knowing. He just refused to receive my water, my assistance. He just refused it all together.

Q. Did you ever tell him to stand up, did you ever tell him to "Goom".  
A. Yes. I would tell him to stand up.

Q. And did he respond to that?  
A. No.

Q. And you said he was gasping throughout period of time he was at Camp Whitehorse?  
A. Yes, sir. At the time I was present. I don't know --

Q. You can't comment on when you weren't around. Right?  
A. Yes, sir.

Q. You had written two statements -- two handwritten statements as part of this whole period of the investigation that took place after (b)(6) had died?  
A. I believe two possibly, three. I believe the third one may have been written by the NCIS.

Q. I've seen two handwritten ones by you, does that sound about right?  
A. Yes, sir.

Q. Okay. Do you remember NCIS typing up a statement that you signed?  
A. I don't think I signed the statement.

Q. Because I haven't seen it if you have?  
A. No. I don't think I signed.

Q. Okay. But you do remember writing two statements out?  
A. Yes, sir.

Q. Okay. Um, I just want to clear something up, you said that on the morning of the 4th when you first saw (b)(6), you said he was gasping for air like I said in my statement. But I read through your statements and maybe you can just point to me where you said he was gasping for air on the morning of the 4th because I couldn't find it.

DC: Can I approach the witness, sir?

IO: Yes.

*Questions by the military defense counsel (1stLt Folk):*

Q. I just want to make sure these are your statements.  
Take a look at both of them and look at me when you're done. Okay?

*The witness did as directed.*

Q. Can you tell Colonel Gallow what that document is that you're reading currently?

A. This is a statement that I wrote when I was speaking to the HET Team, I mean to NCIS, sir.

Q. Is there a date on that statement?

A. This one that was dated 13 June 2003.

Q. Okay. Why don't you go ahead and read through that one and look at me when you're done.

*The witness did as directed.*

Q. Did you get a chance to read through that statement?

A. Not completely, sir.

Q. Not completely.

A. Sir, can I have a minute?

Q. Sure.

*The witness perused the document.*

Q. This was the one-page statement. Correct? Is that a complete statement?

A. Yes, sir. This was the original statement.

Q. What date is that from?

A. It's not dated, sir, but --

Q. That was the first statement that you made?

A. This seems to be the first statement that I wrote.

Q. Okay. Now, in that statement -- in that statement, there's no mention of him gasping for air on the 8th or on the morning of the 4th. Correct?

A. No, sir.

Q. Okay. Now, if you take a look at the other statement that I provided you real quick, I want to go through that, again I just want to clear this up because I think it's confusing. That second statement is from the 13th of June. Right?

A. Yes, sir.

Q. Okay. That was the one you made in Kuwait City?

A. Yes, sir.

Q. Okay. And that's a six-page, handwritten statement?

A. What's the question, sir.

Q. Okay. In that statement, you don't mention him gasping on the morning of the 4th either. Right?

A. No, sir.

Q. Okay. So -- okay. I just wanted to clear that up. You said that he's laying on the ground gasping on the morning of the 4th. Right? You said in your statement, but that actually reflected nothing in your statement?

CC (MR. HIGGINS): Sir, he's got a third statement, a third statement with NCIS that he's trying to impeach the witness.

DC (1STLT FOLK): Well, that's not a statement. It's a result of interview.

CC (MR. HIGGINS): I need you to clarify a written statement that they refer to talking about his prior statement.

DC (1STLT FOLK): Either way. I wasn't trying to impeach a witness as much as I was trying to straighten out on my end what he was referring to.

Questions by the military defense counsel (1stLt Folk):

Q. Sergeant (b)(6) I want to draw your attention to that morning of the 4th again. You said when you went to get (b)(6) prior to his HET interview, he was laying on the ground?

A. Yes, sir.

Q. Describe how he was laying on the ground?

A. Sideways, sir.

Q. When you say "sideways" do you mean he was laying on the left or right side of his body?

A. Yes, sir. With his hands tied behind his back.

Q. Okay. So -- like, his hand would have been like this?

A. Yes, sir.

Q. Okay. For the record, I'm holding my hand behind my back crossed right over left. And you remember if he was laying on his right or left side at that time?

A. It should have been his right, if I recall correctly, facing me.

Q. And was he awake or asleep at that time?

A. He had a bag over his head.

Q. Did you see him moving at all?

A. No, sir.

Q. And when you brought him back from that HET building, you said he also decided to lay back down?

A. Yes, sir.

Q. And at that time, how was he laying?

A. He was doing the same thing on his side. This time I had taken off his bag and the handcuffs. I don't know if I -- the cuffs off, I'm pretty sure I did.

Q. And he went to laying down again?

A. Yes, sir.



Q. Do you remember how he was laying down at that point -- or you don't remember?  
A. No. Not exactly, sir.

Q. Were the prisoners aloud to just sit if they wanted to?  
A. Yes, sir.

Q. Okay. So he -- you aren't forcing him to lay on your side at any point that morning.  
A. No, sir. Most of them, though, laid on the ground.

DC (1STLT FOLK): All right, sergeant, I don't have any other questions. Thank you.

IO: Any redirect, Captain Francis?

TC: Yes, sir.

#### CROSS-EXAMINATION

##### Questions by the government:

Q. Um, you said that there was a -- during your shift on the 5th, I guess during that period of time of the defecation incident, that a corpsman came and saw him during your shift?

A. Yes, sir. Not my --

Q. Prior to the dragging incident?

A. Not my shift. I believe it was after the dragging incident where half the prisoner was cleaned.

Q. Oh. Okay. So after -- and that was Corpsman (b)(6) -- or doc --

A. Yeah, Doc (b)(6) sir.

Q. Okay. Now, did you or anybody on your shift hit, punch, kick, strike (b)(6) in any way?

A. No, sir.

Q. Also, I want to talk about, what do you recall as to the motion of Lance Corporal (b)(6) when you were standing behind him and you were watching him come out from the back. Okay? Was it -- was he doing something like having one foot and dragging his foot like this?

A. I can't recall that, sir, but I'm sure it was one steady flow.

Q. Okay. Was his feet back like this one step at a time?  
A. Could have been, sir.

Q. Is that what seems accurate to you in your recollection?  
A. I can't remember, sir.

TC: That's all I have, sir. Thank you.

IO: (b)(6)

CC (b)(6) Just briefly, sir.

RECROSS-EXAMINATION

Questions by the civilian counsel (b)(6)

Q. You talked about a statement you had given NCIS when you think the agent just took notes and you didn't sign anything. Correct?  
A. Yes, sir.

Q. Um, do you believe it was that interview in which you talked about him gasping for air?  
A. I know I spoke about it a number of times.

Q. Would -- would the agent's summary of that interview refresh your memory if that's in fact the interview that you're talking about him gasping for air?  
A. I've seen the summary and basically that's accurate, the summary is accurate. I never signed it, but it's accurate.

Q. Okay.

CC (MR. (b)(6)) That's all I have, sir.

DC (CAPT JASPER): No, sir.

IO: Lieutenant Folk?

DC (1STLT FOLK): One question, sir. The gasping you heard -- well, the morning of the 4th, before (b)(6) went to see the HET Team, he had a sandbag over his head the whole time?  
A. Yes, sir.

DC: Thank you.

IO: Any other questions?

TC: Sir, I just have one more area.

REDIRECT EXAMINATION

Questions by the government:

Q. Um, after the dragging incident, did you look at Lance Corporal (b)(6)

A. Yes, sir.

Q. Did he have any defecation on him from (b)(6) that you could see?

A. I don't believe so, sir.

Q. When you saw Lance Corporal (b)(6) dragging (b)(6) out, did it appear that he was positioned in such a way that he could get the defecation on his person?

A. I don't think so, sir.

TC: Okay. Thank you.

IO: Any other questions.

CC (MR. (b)(6)) No, sir.

IO: Okay. Any need for Sergeant (b)(6) to be available for recall?

TC: No, sir.

CC (MR. (b)(6)): No.

DC (1STLT FOLK): No.

IO: Okay. Sergeant (b)(6) your testimony has ended. You will be excused here in a moment to resume your duties. I caution you not to discuss your testimony with anyone other than your attorneys in this case or any related case. And also, if you're approached by the media, I would be very careful of talking to them at all, probably be best not to say anything, and I'm certain you wouldn't go out looking for something to say to them. Again, I can't obviously prevent that, if that's what you desire to do, but don't say anything that you wouldn't want to have repeated in court. Okay?